Crees v. California State Board of Medical Examiners, 213 Cal.App.2d 195

[Civ. No. 26230. Second Dist., Div. Two. Feb. 20, 1963.]

CREES et al., Plaintiffs and Appellants, v. CALIFORNIA STATE BOARD OF MEDICAL EXAMINERS et al., Defendants and Respondents.

COUNSEL

Nathan Newby, Jr., for Plaintiffs and Appellants.

Behm & Callan and George W. Kell as Amici Curiae on behalf of Plaintiffs and Appellants.

Stanley Mosk, Attorney General, E. G. Funke, Assistant Attorney General, and Conrad Lee Klein, Deputy Attorney General, for Defendants and Respondents.

OPINION

FOX, P. J.

This is an appeal by plaintiffs from a judgment in an action for a declaration of rights.

Plaintiffs are a California nonprofit corporation composed of practicing doctors of chiropractic and seven individual licentiates of the chiropractic board. They brought this action for declaratory and injunctive relief against defendants, who are the California State Board of Medical Examiners, five members of that board, the California State Board of Chiropractic Examiners and two members of that board. Plaintiffs sought to have certain rights, immunities, and privileges, claimed by plaintiff doctors of chiropractic under the Medical Practice Act (Bus. and Prof. Code, § 2000-2490) and the Chiropractic Initiative Act (West's Bus. & Prof. Code, §§ 1000, 1000-1 to 1000-19 [Deering's Bus. & Prof. Code, Appendix I, § 1 et seq.; Stats. 1923, p. xx; Deering's Gen. Laws, 1954, Act 4811], 1001), defined and declared. Plaintiffs also sought injunctions against the two defendant boards to enjoin them from interfering with said asserted rights.

A joint pretrial statement was prepared and signed by the parties. The pretrial judge, who was also the trial judge, made a pretrial conference order fn. 1 modifying the pretrial statement and adopting portions of the pleadings. At the opening of the trial, stipulations were made: (1) That if called to testify the seven plaintiff doctors of chiropractic would each testify that each would in the practice of chiropractic perform the acts and use the drugs and medicines mentioned in the plaintiffs' contentions in the pretrial statement and would contend that the same was a part of chiropractic; and (2) That if the investigator for the California State Medical Board were called on the witness stand, he would testify that if plaintiffs did perform such acts and **[213 Cal.App.2d 201]** use such drugs as set

forth in plaintiffs' contentions in the pretrial statement, he would, on behalf of the board, investigate the same and ask the proper authorities for issuance of a criminal complaint based on such acts insofar as they would appear to violate the Medical Practice Act.

Defendants made a motion for judgment on the pleadings which was denied. Defendants then moved for a declaration of rights and duties of the parties based upon (1) the allegations of the complaint; (2) the answer thereto; (3) the pretrial order; and (4) the issues set forth in the pretrial order. Plaintiffs made several offers of proof involving proposed testimony primarily concerning practices in the science of chiropractic and present and past curricula at colleges of chiropractic. Defendant board of medical examiners objected to the offers of proof on the grounds of immateriality and irrelevancy. The objection was sustained. The court then granted the motion of defendants for a declaration of rights and duties of the parties. The court made findings of fact and conclusions of law, and gave judgment for defendants. The pertinent portions of the judgment are:

"It is Ordered, Adjudged and Decreed that the respective rights and duties of the parties are as follows:

"A. That an actual controversy exists between the plaintiffs and the defendants herein relating to their respective legal duties and rights.

"B. Section 2141 of the Business and Professions Code applies to plaintiff doctors of chiropractic and is not unconstitutional when applied to plaintiffs or any of them.

"C. Persons holding valid, unrevoked licenses from the Board of Chiropractic Examiners can be prosecuted under the State Medical Practice Act for violations thereof.

"* * *

"E. Duly licensed chiropractors who do not hold themselves out as physicians and surgeons, but only as 'doctors of chiropractic' or 'D.C.' may, nevertheless, be in violation of the State Medical Practice Act.

"F. Licensed chiropractors are not authorized by their license to use any drugs or medicines in materia medica or the dangerous or hypnotic drugs mentioned in section 4211 of the Business and Professions Code or the narcotics referred to in section 11500 of the Health and Safety Code for: (1) diagnosis; (2) as an aid in the practice of chiropractic; (3) for emergencies; or (4) for clinical research. **[213 Cal.App.2d 202]**

"G. Licensed chiropractors are not authorized by their license to practice obstetrics or to sever the umbilical cord in any childbirth or to perform episiotomy.

"H. A duly licensed chiropractor may only practice or attempt to practice or hold himself out as practicing a system of treatment by manipulation of the joints of the human body by manipulation of anatomical displacements, articulation of the spinal column, including

its vertebrae and cord, and he may use all necessary, mechanical, hygienic and sanitary measures incident to the care of the body in connection with said system of treatment, but not for the purpose of treatment, and not including measures as would constitute the practice of medicine, surgery, osteopathy, dentistry, or optometry, and without the use of any drug or medicine included in materia medica.

"A duly licensed chiropractor may make use of light, air, water, rest, heat, diet, exercise, massage and physical culture, but only in connection with and incident to the practice of chiropractic as hereinabove set forth.

"I. It is true that chiropractic is not a static system of healing and that it may advance and change in technique, teaching, learning, and mode of treatment within the limits of chiropractic as set forth in paragraph H above. It may not advance into the fields of medicine, surgery, osteopathy, dentistry, or optometry.

"J. Plaintiffs have failed to state facts sufficient to constitute a cause of action for injunction against defendants.

"K. None of the plaintiffs are entitled to any injunctive relief against any of the defendants; defendants and their agents may proceed against plaintiffs in the event that plaintiffs exceed the scope of their respective licenses to practice chiropractic and violate the State Medical Practice Act."

Since the questions involved in this case are of fundamental importance to the health and safety of the public as well as to the profession of chiropractic, this court has granted the request of the California Chiropractic Association, which represents itself as having a membership of 600 practitioners of chiropractic, to submit a brief as amicus curiae.

Plaintiffs contend on appeal that the trial court erred in (1) refusing to permit introduction of evidence by plaintiffs in support of their contentions and claims; (2) granting the motion of defendants for a declaration of rights and duties of the parties based on the pleadings and stipulations; **[213 Cal.App.2d 203]** (3) in making the declarations set forth in paragraphs B, C, E, F, G, H, J, and K of the judgment, supra; and (4) failing to make a declaration as to the meaning of the term "practice" as contained in the last part of section 7 of the Chiropractic Act. (West's Bus. & Prof. Code, § 1000-7 [Deering's Bus. & Prof. Code, Appendix I, § 7; Stats. 1923, p. xxii, § 7; Deering's Gen. Laws, 1954, Act 4811, § 7].) fn. 2

In addition, the amicus curiae cites as alleged error the failure of the trial court to refer questions of the extent and scope of chiropractic to the California State Board of Chiropractic Examiners before taking further action in the proceedings below.

Introduction of Evidence

Plaintiffs base their contention that evidence concerning practices in the science of chiropractic and present and past curricula at colleges of chiropractic should have been

heard by the trial court on section 1000-7 of the [West's] Business and Professions Code [Deering's Bus. & Prof. Code, Appendix I, § 7], which provides that a license issued by the Board of Chiropractic Examiners shall authorize the holder thereof "to practice chiropractic in the State of California as taught in chiropractic schools or colleges. ..." (Italics added.) [1] They contend that to establish what is chiropractic, it is necessary, inter alia, to take extrinsic evidence as to what is and has been taught in chiropractic educational institutions, and the practices that have developed in the profession.

Their position, however, is not sustained by the prevailing authorities. Section 7 of the Chiropractic Act (West's Bus. and Prof. Code, § 1000-7 [Deering's Bus. & Prof. Code, Appendix I, § 7]) contains the only provision which undertakes either to define or describe chiropractic or to declare what is authorized by a license issued under the act. [2] The authorization is in two parts: (1) "to practice chiropractic ... as taught in chiropractic schools or colleges"; and (2) "to use all necessary mechanical, and **[213 Cal.App.2d 204]** hygienic and sanitary measures incident to the care of the body."

The first part of this authorization, plaintiffs contend, authorizes the practice by a licensed chiropractor of anything that he has been taught in chiropractic schools. fn. 3 As said in People v. Fowler, 32 Cal.App.2d Supp. 737, 745 [84 P.2d 326]: "This is too broad an interpretation of the provision. It contains two expressions, each of which has a limiting, as well as an authorizing effect. The practice authorized must be 'chiropractic', and it must also be 'as taught in chiropractic schools or colleges'. Neither of these expressions can rule the meaning of the statute, to the exclusion of the other." [3] The court pointed out (pp. 746-747) that there was a "general consensus of definitions, current at and before the time the Chiropractic Act was adopted [which] shows what was meant by the term 'Chiropractic' when used in this act;" also, that " '[t]he words of a statute must be taken in the sense in which they were understood at the time when the statute was enacted.' [Citations.]"; and that "[w]ords of common use, when found in a statute, are to be taken in their ordinary and general sense. [Citations.]" The court explained that "[t]he effect of the words 'as taught in chiropractic schools or colleges' is not to set at large the signification of 'chiropractic', leaving the schools and colleges to fix upon it any meaning they choose. Were the word 'chiropractic' of unknown, ambiguous or doubtful meaning, this clause ... might serve to provide a means of defining or fixing its signification, but there is here no such lack of clarity. The scope of chiropractic being well known, the schools and colleges, so far as the authorization of the chiropractor's license is concerned, must stay within its boundaries; they cannot exceed or enlarge them. The matter left to them [the schools and colleges] is merely the ascertainment and selection of such among the possible modes of doing what is comprehended within that term, as may seem to them best and most desirable, and so the fixing of the standards of action in that respect to be followed by chiropractic licensees." **[213 Cal.App.2d 205]**

[4] The position of the court in Fowler relative to the asserted right to practice whatever is taught in chiropractic educational institutions finds support in the case of In re Hartman, 10 Cal.App.2d 213 [51 P.2d 1104]. At page 217 the court says: "While the section [section 7] contains the additional clause 'as taught in Chiropractic schools or colleges', the entire section must be taken as a whole and it cannot be taken as authorizing

a license to do anything and everything that might be taught in such a school. ... It is not sufficient that a particular practice is taught in such a school. Under the terms of the statute it must meet the further test that it is a part of chiropractic, whatever that philosophy or method may be, and further that it shall not violate the provision which expressly forbids the practice of medicine. If such a practice is not a part of chiropractic but does constitute the practice of medicine, it is not authorized under this license even though it may be taught in such a school."

[5] In Fowler, the court continues (p. 747): "The second part of the authorization contained in section 7 of the act [West's Bus. and Prof. Code, § 1000-7 (Deering's Bus. & Prof. Code, Appendix I, § 7)], 'to use all necessary mechanical, and hygienic and sanitary measures incident to the care of the body', is not a definition of, but an addition to, [']chiropractic['] as used in the previous part of section 7 and authorizes chiropractors to use measures which would not otherwise be within the scope of their licenses."

In sum, Fowler states (p. 748): "[T]he chiropractor is limited to the practice of chiropractic and the use of mechanical, hygienic and sanitary measures incident to the care of the body, which do not invade the field of medicine and surgery, irrespective of whether or not additional phases of the healing art, including medicine and surgery or the use of drugs, may have been taught in chiropractic schools or colleges" and, we should add, irrespective of whether any such additional phases have actually been used by some chiropractors illegally as part of professional treatment.

The principle enunciated in the Fowler case, viz., that the "... general consensus of definitions, current at and before the time the Chiropractic Act was adopted, shows what was meant by the term 'chiropractic' when used in that act" (People v. Fowler, supra, at 746), has been cited and followed **[213 Cal.App.2d 206]** by the courts of this state through the intervening years. "[T]he limits of permissible practice by the holder of a chiropractic license ... do not extend ... beyond the scope of chiropractic as that term was understood and defined in 1922, and the ambitious attempts of chiropractic schools or colleges to extend them by teaching other subjects under the guise of chiropractic must fail, so long as the statute remains as it is now." (People v. Mangiagli, 97 Cal.App.2d Supp. 935, 939 [218 P.2d 1025]; see also People v. Nunn, 65 Cal.App.2d 188, 194-195 [150 P.2d 476].) "The terminology [of the 1922 initiative Chiropractic Act] is that of common usage. ..." (Jacobsen v. Board of Chiropractic Examiners, 169 Cal.App.2d 389, 392 [337 P.2d 233].) "[T]he term 'chiropractic' includes only the meaning of that term as it was generally understood in 1922 when the Chiropractic Act was adopted." (People v. Augusto, 193 Cal.App.2d 253, 257-258 [14 Cal.Rptr. 284]; hear. den.)

This principle of the Fowler case has also been adopted by courts in other jurisdictions, which have also cited Fowler with approval. In State ex rel. Wheat v. Moore, 154 Kan. 193 [117 P.2d 598], the phrase "as taught and practiced in ... colleges of oesteopathy" was involved. The Kansas Supreme Court stated (117 P.2d at 604): "The words of a statute must be taken in the sense in which they were understood at the time when the statute was enacted ... (People v. Fowler, supra.)" At the same page, the Kansas court also cites Fowler as a "well-considered" opinion for its distinguishing of various forms of the

healing arts. One year earlier, in Burke v. Kansas State Osteopathic Assn. (1940) 111 F.2d 250, the Circuit Court of Appeals for the Tenth Circuit had dealt with the same question of construction as involved in the Moore case. In Burke, the federal court stated (p. 256): "[T]he mere fact that these subjects were taught in the osteopathic college is not evidence that the graduates of that college had a right to practice anything but osteopathy. In many of the leading schools of America today, the principles of communism, facisms [sic] and other isms inimical to our form of government are examined and discussed. Not that these schools desire their students to believe these isms but that the students may know what they are and discern between these objectionable theories of government and proper forms of government."

The Supreme Court of Wisconsin cited Fowler in State v. **[213 Cal.App.2d 207]** Grayson, 5 Wis.2d 203 [92 N.W. 2d 272]. In that case, the court was called upon to rule with respect to a definition of "chiropractic" similar to that in Fowler. In holding the definition to be "fully consistent" with those found in dictionaries and encyclopedias, the court said (92 N.W. 2d at 277): "In People v. Fowler ... a California intermediate appellate court was called upon to determine the meaning of the word 'chiropractic' ... The court arrived at a definition very similar in scope to that [in this case] ... We can perceive no clear cut legislative intent that ... [the] definition [of 'chiropractic'] must ... [be] so broad in scope as to permit every practice or procedure that may be taught in any chiropractic college."

In Smith v. State Board of Medicine of Idaho, 74 Idaho 191 [259 P.2d 1033] the Idaho Supreme Court cited Fowler as support for affirming a conviction of a "naturopath" for practicing medicine. Fowler and In re Hartman, supra, are cited by the Nebraska Supreme Court in State ex rel. Johnson v. Wagner, 139 Neb. 471 [297 N.W. 906], where the scope of "osteopathy" was in question. There, the court stated (p. 910): "The scope of osteopathy is well known and schools and colleges of osteopathy must stay within its boundaries, they cannot enlarge them. (People v. Fowler ...)" The statute involved in Wagner contained the phrase "as taught in ... Ostoepathic colleges ..." The Nebraska court pointed out that "[t]he fact that branches of medicine and surgery may be taught to increase the knowledge of the student ... will not warrant him to invade those fields on the theory that they constitute the practice of osteopathy." (State ex rel. Johnson v. Wagner, supra, at p. 910). See also Lynch v. Department of Labor & Industries, 19 Wn.2d 802 [145 P.2d 265] (citing Fowler at p. 270 [145 P.2d]); State v. Boston, 226 Iowa 429 [284 N.W. 143]; State Board of Medical Examiners v. McHenery (La.App.) 69 So.2d 592; Commonwealth v. Zimmerman, 221 Mass. 184 [108 N.E. 893, Ann. Cas. 1916A 858].

There is patently no merit in plaintiffs' claim that the practices that have developed in this profession are admissible in evidence to determine the acts and procedures they may properly perform under their chiropractic license. In Jacobsen v. Board of Chiropractic Examiners (1959) 169 Cal.App.2d 389 [337 P.2d 233], a chiropractor was charged with violating the Chiropractic Act for advertising the cure of sexual **[213 Cal.App.2d 208]** disorders. He sought to introduce some 60 similar advertisements of other chiropractors throughout the state. His purpose was to show the practice in the profession, arguing that

thereby he could establish the standard exacted by law. The court, at page 395, held the offer was properly rejected and stated: "[W]e know of no rule which says that the conduct of those whose activities are regulated by the statute can aid in its construction."

From the foregoing, it is abundantly clear that the trial court's ruling on plaintiffs' proffered evidence was correct.

Procedure

There is no merit whatever in plaintiffs' apparent suggestion that the court erred in declaring the rights and duties of the parties on the basis of the pleadings, the stipulations, and the pretrial conference order. [6] "The propriety of adjudicating the respective contentions of the parties upon the pleadings in an action for declaratory relief by means of a motion for judgment on the pleadings is recognized and established in this state." (Wilson v. Board of Retirement, 156 Cal.App.2d 195, 201 [319 P.2d 426].)

Section 2141, Business and Professions Code fn. 4

[7] Plaintiffs fallaciously argue that section 2141, Business and Professions Code, does not apply to licensed chiropractors and that the possession of such a license is a complete defense to a charge of violating this section. fn. 5 By its express provisions section 2141 makes it a misdemeanor for any person not holding a license issued by the Board of Medical Examiners to engage in or practice any system or mode **[213 Cal.App.2d 209]** of treating the sick or afflicted. However, at the general election of November 7, 1922, the people of this state approved the Chiropractic Act, which created the Board of Chiropractic Examiners with authority to issue licenses to practice chiropractic. (Chiropractic Act, § 7.) Plaintiffs' argument finds no support in the language in either the Chiropractic Act or the Medical Practice Act. The only effect of the enactment of the Chiropractic Act on the Medical Practice Act was to create a limited exception to the prohibition against practicing a healing art without a license from the Board of Medical Examiners; that a holder of a license to practice chiropractic may practice chiropractic (not medicine or surgery); and that is the limit of the exception. (People v. Machado, 99 Cal.App. 702, 706 [279 P. 228]; People v. Augusto, 193 Cal.App.2d 253, 257 [14 Cal.Rptr. 284]; People v. Fowler, supra, p. 742; People v. Mangiagli, supra, p. 938; In re Hartman, supra, p. 217; People v. Nunn, supra, p. 194.) In Machado, defendant, a chiropractor, was convicted of having violated the Medical Practice Act. He offered in evidence his chiropractic license. His offer was rejected on the ground the same was immaterial since the possession of a chiropractic license constituted no defense to a violation of the Medical Practice Act. This ruling was sustained on appeal (pp. 704-706). Reference to the statutes and the foregoing authorities demonstrates that there is no legal support for plaintiffs' argument, and that the trial court correctly declared "Section 2141 of the Business and Professions Code applies to plaintiff doctors of chiropractic" and that "[p]ersons holding valid, unrevoked licenses from the Board of Chiropractic Examiners can be prosecuted under the State Medical Practice Act for violations thereof."

Validity of Section 302 of the Administrative Code

[8] In 1954 the Board of Chiropractic Examiners adopted a regulation fn. 6 which purported to expand substantially the area of professional activity on the part of chiropractors and the means and facilities at their disposal in their practice of the healing art. The trial court held that this regulation was **[213 Cal.App.2d 210]** invalid insofar as it purported to alter or enlarge the scope of the practice of chiropractic under the Chiropractic Act. This decision is correct. (People v. Mangiagli, supra; Duskin v. State Board of Dry Cleaners, 58 Cal.2d 155 [23 Cal.Rptr. 404, 373 P.2d 468].) [9] In Mangiagli, the court stated on rehearing (p. 943): " 'An administrative officer may not make a rule or regulation that alters or enlarges the terms of a legislative [or initiative] enactment' [citations]." In Duskin, the court, in dealing with a regulation of another administrative agency, held: "Thus the regulation, ... insofar as it attempted to enlarge the terms of the enabling statute, ... is invalid." (P. 165.) [10] This determination adequately disposes of the contention made in the brief of amicus curiae to the effect that "questions of the extent and scope of chiropractic" should have been referred to the Chiropractic Board for its consideration and recommendation to the court before it took final action. Furthermore, such a procedure would have been totally out of harmony with the principle of the separation of legislative and judicial powers.

May a Chiropractor Who Holds Himself Out Only as Such Ever Be Guilty of Violating the Medical Practice Act?

Plaintiffs vainly challenge the declaration of the trial court that: "Duly licensed chiropractors who do not hold themselves out as physicians and surgeons, but only as 'doctors of chiropractic' or 'D.C.' may, nevertheless, be in violation of the State Medical Practice Act." This declaration is so obviously correct that it requires but brief comment. [11] As previously pointed out a chiropractic license entitles the holder thereof to perform certain acts in the practice of his particular healing art; it does not, however, authorize him to perform acts or administer treatment beyond the scope of the authority conferred by his certificate. Specifically, one who, inter alia, "diagnoses, treats, operates for, or prescribes for any ailment, blemish, deformity, disease, disfigurement, disorder, injury, or other mental or physical condition of any person" must have a license from the Board of Medical Examiners (Bus. and Prof. Code, § 2141). One who performs any of these acts or procedures without such a license is guilty of a misdemeanor (§ 2141). This is the practice of medicine, and section 7 of the Chiropractic Act provides that the "License to practice chiropractic ... shall not **[213 Cal.App.2d 211]** authorize the practice of medicine, surgery, ..." [12] It therefore follows that when a doctor of chiropractic does an act or performs a procedure forbidden by section 2141, Business and Professions Code, except by one holding a license under the Medical Practice Act, he violates said act even though he does not hold himself out as a doctor of medicine. [13] It is the doing of an act that is forbidden by law that constitutes the criminal offense. As pointed out in People v. Cantor, 198 Cal.App.2d Supp. 843, 848 [18 Cal.Rptr. 363]: "... a violation of the Medical Practice Act is not absolved by a concurrent statement that the violator is not a doctor [citation]." There is nothing in Ex parte Greenall, 153 Cal. 767 [96 P. 804], on which plaintiffs rely, that is contrary to these principles.

Does a License to Practice Chiropractic Authorize the Holder Thereof: (1) To Use Drugs or Medicines: Or (2) To Practice Obstetrics, Sever the Umbilical Cord, or Perform Episiotomy?

The initial answer to this question is found in section 7 of the Chiropractic Act as adopted by the people at the general election in November 1922. That section provides that the "License to practice chiropractic' ... shall not authorize the practice of medicine, surgery ... nor the use of any drug or medicine now or hereafter included in materia medica." [14] In this connection it is appropriate to point out that in the official argument presented to the voters prior to the November 1922 election, in favor of the adoption of the Chiropractic Act, it was stated that the proposed act "prohibits the use of drugs, surgery or the practice of obstetrics by chiropractors. ..." fn. 7 The official argument may be considered as an aid to an interpretation of an act. (Beneficial Loan Society, Ltd. v. Haight, 215 Cal. 506, 515 [11 P.2d 857]; People v. Fowler, supra, pp. 744- 745.) In People v. Augusto, 193 Cal.App.2d 253 [14 Cal.Rptr. 284], the court points out (pp. 257-258) that a chiropractor administers his treatment " '... with the hands, no drugs being administered.' [Citations.]" [15] Thus it is crystal clear from the plain wording of the initiative act and the decisions in this state that a chiropractor is not authorized to use drugs or medicines and **[213 Cal.App.2d 212]** it was not intended that he should be so authorized. It is likewise equally clear that the holder of a chiropractic license is not authorized to perform surgery. The Chiropractic Act expressly so provides (§ 7), and the decisions so hold (People v. Fowler, supra; People v. Nunn, supra). In the Nunn case this court stated (p. 194): "By chapter 5, division II of the Bus. and Prof. Code a chiropractor cannot legally practice surgery." And the argument to the voters shows that it was not contemplated that chiropractors would be authorized under the initiative measure to practice surgery.

[16] It will be recalled that section 7 of the Chiropractic Act also provides that a license to practice chiropractic shall not authorize the practice of medicine. It is apparent that these provisions do not authorize the practice of obstetrics, fn. 8 the severance of the umbilical cord or the performance of an episiotomy. fn. 9 These procedures all fall in the medical-surgical field (see, e.g., In re Hartman, supra; People v. Nunn, supra) which chiropractors may not invade.

[17] In an effort to fortify their position, plaintiffs emphasize the portion of section 7 which provides that the holder of a license to practice chiropractic may "use all necessary mechanical, and hygienic and sanitary measures incident to the care of the body ..." But this language does not authorize either the use of drugs, medicines, the severance of tissues, or the practice of obstetrics. In this connection it should be noted that the last provision of section 7 (following the last quoted authorization) sets forth two very specific limitations: (1) that the license to practice chiropractic "shall not authorize the practice" of medicine or surgery; (2) "nor the use of any drug or medicine now or hereafter included in materia medica."

In re Hartman, supra, throws light on the aspect of our problem which deals with the use of all necessary mechanical, **[213 Cal.App.2d 213]** and hygienic and sanitary measures

incident to the care of the body. Hartman was convicted, inter alia, of practicing medicine without a license, i.e., injecting an antitoxin into a human for the treatment of cancer in violation of the Medical Practice Act. On appeal from his conviction he argued, among other things, that the possession and use of the hypodermic syringe and needle was an authorized measure "incident" to the care of the body. In rejecting this contention the court stated (p. 217): "We think this [hypodermic injection of antitoxin] cannot be held to be merely a measure incident to the care of the body within the meaning of that section both because that clause of the section refers to general hygienic and sanitary measures, even though mechanical, and not to the treatment of diseases and ailments, and because the section contains the further limitation that the authorization granted shall not extend to the practice of medicine or surgery." In People v. Nunn, supra, the late Presiding Justice Moore of this court pointed out (p. 194) that a chiropractor "is limited to the use of mechanical hygienic measures incident to the care of the body which do not invade the field of medicine and surgery." From the foregoing it is apparent that the provision of section 7 of the Chiropractic Act authorizing a chiropractor to use mechanical, hygienic, and sanitary measures incident to the care of the body does not authorize him to practice obstetrics, sever the umbilical cord, or perform an episiotomy for this would be invading the field of medicine and surgery and this he may not do under the express provisions of said section.

[18] Although the Chiropractic Act provides that a license to practice chiropractic does not authorize the use of "any drug or medicine now or hereafter included in materia medica," plaintiffs nevertheless contend that a chiropractor may use such drugs or medicines for: (1) diagnosis; (2) as an aid in the practice of chiropractic; (3) for emergencies; or (4) for clinical research. But since a chiropractor is not authorized to use drugs and medicines at all, it follows that his license does not authorize him to use them in any of the above areas of his professional activities.

Finally, in this connection, plaintiffs contend that the substances normally included in materia medica are now excluded by reason of the adoption of section 13 to the Business and Professions Code by the Legislature in 1961. First, the court was not called upon by the pleadings or pretrial conference **[213 Cal.App.2d 214]** order, and did not undertake, to determine the substances included in materia medica. Second, section 13 did not become effective until September 15, 1961. [19] The judgment herein was signed and filed on September 8, 1961. Thus the section was not in effect when the case was tried and the judgment rendered. Obviously, therefore, the section could have no bearing on the judgment.

From the foregoing it is manifest that the court's declaration of the rights of the parties in paragraphs F and G of the judgment is correct.

Plaintiffs complain, however, that the effect of paragraph G of the judgment is to selectively limit the nature and types of diseases, ailments, and mental and bodily conditions which can be treated by licentiates of the Chiropractic Board. If the chiropractic profession desires to expand the scope of their professional activities so as to include the practice of obstetrics and the right to sever the umbilical cord and perform

episiotomy they must turn to the people, from whom they received permission to exercise the privileges they now enjoy, for legitimation of these additional practices.

Declaration of Scope of Practice, and Acts and Procedures That a Chiropractor May Properly Perform

In paragraph H of the judgment the court declared the scope and nature of the practice of the healing art that may be engaged in by one who holds a license to practice chiropractic, and the character of the acts that such a licentiate may perform and the procedures that he may adopt and use. Each aspect of this declaration of a licentiate's rights and privileges and limitations thereon finds adequate support in the statutes and cases cited, quoted from, and discussed herein. Plaintiffs' challenge to this declaration is essentially an attack on the principles upon which the declaration is based. Our previous discussion has demonstrated that each of these principles is sound. Further discussion of plaintiffs' attack on paragraph H would be largely repetitious and therefore unprofitable.

Constitutionality of Section 2141, Business and Professions Code

[20] In attacking the constitutionality of section 2141, Business and Professions Code, plaintiffs made two basic contentions: (1) the section is vague; and (2) it reflects an invalid classification. The same contentions were raised last **[213 Cal.App.2d 215]** year by plaintiff Dayan herein, after he had been convicted of violating section 2141. The federal District Court dismissed his petition for writ of habeas corpus. In affirming the judgment of dismissal the Ninth Circuit Court of Appeals adequately disposed of the invalid classification argument. The court stated: "We find his constitutional claims without merit. California can define the limits of its professions, and we find nothing unreasonable in the statutory classifications or the California interpretations thereof. The statute has sufficient specificity. [Citation.] And we find no lack of due process in the California proceedings." (Dayan v. People of the State of California, 293 F. 2d 46. (Italics added.)

There is no merit whatever in the contention that section 2141 is unconstitutionally vague. A reading of the section suggests that people of common intelligence would have no trouble in understanding what was proscribed. In People v. Cantor, 198 Cal.App.2d Supp. 843 [18 Cal.Rptr. 363], the defendant, a hypnotist, was convicted of practicing medicine without a license in violation of section 2141. On appeal he attacked the section as being too vague and uncertain. The court held, however (p. 852): "We find no vagueness or uncertainty in the words of section 2141; the argument of its unconstitutionality on that ground must fall." (Accord: People v. Mangiagli, supra.)

[21] Plaintiffs also argue section 2141 is rendered vague because of the enactment of the Chiropractic Act creating a limited exception thereto. This is not sound. The creation of a defense or exception by section 7 of the Chiropractic Act to the enforcement of section 2141 does not make the basic prohibition found in section 2141 unconstitutionally vague. (See Dayan v. People of the State of California, supra.)

[22] Plaintiffs also complain that a "constructive crime" has been built up by the courts with the aid of inference, implication, and strained interpretation. Such an argument is not here apposite. Section 2141 is sufficiently definite and certain, and requires no interpretation to bring a chiropractor practicing medicine or surgery within the scope of its prohibition. A holding that a chiropractor who performed surgery could not be prosecuted under section 2141 would distort the letter and purpose of the section. (Cf. Newhouse **[213 Cal.App.2d 216]** v. Board of Osteopathic Examiners, 159 Cal.App.2d 728, 734-735 [324 P.2d 687].)

Due Process

Plaintiffs argue that they are denied due process by the state's administration of the Medical Practice Act, especially section 2141, Business and Professions Code, and by the courts in their interpretation and application of that section. Neither of these issues was before the trial court fn. 10 and no evidence relating thereto was offered by either side. [23] In this state of the record we are not called upon to consider plaintiffs' unsupported accusations of discrimination. But, argue the chiropractors, they have an "unconscionable burden" placed on them in attempting to prove their innocence of a charge of violating section 2141 because they must prove that they fall within an exception to the prohibition contained in that section. [24] The law is clear that ordinarily it is appropriate for the prosecution to rest upon proving that a person has committed a generally prohibited act, and that it is for the defense to assume the burden of proving some legal excuse or that the defense falls within an excepted class. Now, let us see if any "unconscionable burden" is placed on a licensed chiropractor to prove his innocence after the prosecution has presented evidence that the chiropractor has engaged in the healing art. First the defendant must prove that he holds a license to practice chiropractic. He can do this by simply offering in evidence a certificate of the officer in charge of the records of the Board of Chiropractic Examiners (Bus. and Prof. Code § 162); or a copy of the official directory of licentiates (Bus. and Prof. Code, §§ 112, 1001); or he could ask the court to take judicial notice of the issuance of his license (Code Civ. Proc., § 1875, subd. 3). He would then urge that the act of "healing" that the People had proved that he had performed was within the scope of his license, i.e., that it was chiropractic. He has then carried his burden, which is patently not an "unconscionable" one.

[25] The burden of a chiropractor to prove his license and that he was acting within its authorization is no more "unconscionable" than is the burden of a defendant attempting **[213 Cal.App.2d 217]** to prove self-defense, entrapment, or that he had no knowledge of the presence of narcotics in a car that he was driving. The burden on a chiropractor to prove that he falls within an exception to section 2141 is not such as to violate his constitutional right of due process. It is not at all comparable to that placed on the defendant in People v. Tilkin, 34 Cal.App.2d Supp. 743 [90 P.2d 148], on which plaintiffs rely.

Equal Protection of the Law

[26] Plaintiffs argue that if chiropractors can be prosecuted for violating section 2141, Business and Professions Code, but drugless practitioners cannot, then there is an unreasonable discrimination prohibited by constitutional considerations. The simple answer to this argument is that section 2141 applies to everyone--chiropractors, drugless practitioners, barbers, truck drivers, and everyone else.

Plaintiffs' argument is predicated upon a misconception of the significance of the decision in Cooper v. State Board of Medical Examiners, 35 Cal.2d 242 [217 P.2d 630, 18 A.L.R.2d 593]. Plaintiffs take the position that the Cooper case "holds that a drugless practitioner who is licensed by the Medical Board cannot be charged with a violation of section 2141 for practicing outside the scope of his license ..." The case does not so hold. It involved an administrative proceeding before the Board of Medical Examiners where the sole question was the propriety of that board's revocation of Cooper's license as a drugless practitioner. There was no issue, nor was there any discussion by the court of Cooper's liability to criminal prosecution for violation of section 2141. The court did, however, approve the board's finding that Cooper had violated section 2141 by giving a blood transfusion since this was outside the scope of his license. The court stated (p. 250): "... it appears that the administration of such transfusion by petitioner did constitute the practicing of a system of treating the sick or afflicted which petitioner's drugless practitioner's license did not authorize. (See People v. Nunn, 65 Cal.App.2d 188, 194-195 [150 P.2d 476].)"

In presenting their point plaintiffs say that all persons are entitled to "the protection of equal laws." In taking this position plaintiffs overlook the established principle that the Legislature may classify in the course of regulating different groups of persons, and that the classification will be sustained **[213 Cal.App.2d 218]** unless it is found to discriminate unreasonably in favor of one group and against another. In each of the following cases one group within the healing arts challenged a statute on the ground that another group was receiving more favorable treatment, and that the classification resulted in unreasonable discrimination. In each case the equal protection challenge was rejected and the classification, based on different training or different types of practice, was upheld. (Crane v. Johnson, 242 U.S. 339 [37 S.Ct. 176, 61 L.Ed. 348]; McNaughton v. Johnson, 242 U.S. 344 [37 S.Ct. 178, 61 L.Ed. 352]; Louisiana State Board of Medical Examiners v. Fife, 162 La. 681 [111 So. 58, 54 A.L.R. 594] affd. per cur., 274 U.S. 720 [47 S.Ct. 590, 71 L.Ed. 1324]; Williamson v. Lee Optical of Oklahoma, 348 U.S. 483 [75 S.Ct. 461, 99 L.Ed. 563]; Gamble v. Board of Osteopathic Examiners, 21 Cal.2d 215 [130 P.2d 382]; Oosterveen v. Board of Medical Examiners, 112 Cal.App.2d 201 [246 P.2d 136]; In re Rust, 181 Cal. 73 [183 P. 548]; People v. Jordan, 172 Cal. 391 [156 P. 451]; Ex parte Bohannon, 14 Cal.App. 321 [111 P. 1039].)

[27] In the instant case plaintiffs practice "one school" of the healing art; drugless practitioners practice another. The training of the two groups is different; their respective practices of the healing art are not the same. It cannot therefore be said that providing separate classifications for the two professions and somewhat different regulations for each operates to discriminate unreasonably against chiropractors. In this connection it is appropriate to note that the members of each of these professions may not extend the

nature and scope of their practice beyond that which is authorized by their respective licenses, and that any member of either group is subject to substantial detriment if he does so.

[28] Plaintiffs are in no position to complain that the court erred in failing to make a declaration as to the meaning of the term "practice" as used in the last part of section 7 of the Chiropractic Act which reads: "but shall not authorize the practice of medicine, surgery, ..." for the reason that they never requested such declaration and by stipulation contained in the pretrial conference order waived any issue not set forth "in this pre-trial order."

[29] Since plaintiffs' request for injunctive relief is predicated upon a declaration that they have certain rights, immunities, **[213 Cal.App.2d 219]** and privileges under the Medical Practice Act and the Chiropractic Initiative Act and since in our opinion the trial court has correctly declared the law adverse to their contentions, it follows that the trial court properly denied injunctive relief.

It seems unnecessary to discuss certain collateral and incidental arguments that plaintiffs have made in their 112-page opening brief since they could not possibly affect the outcome of this case and such discussion would only serve to unduly extend this opinion.

The judgment is affirmed.

Ashburn, J., and Herndon, J., concurred.

FN 1. It was stipulated that the only issues to be determined by the trial court were those set forth in its pretrial conference order, any others being expressly waived.

FN 2. The pertinent portion of the section provides that the "... 'License to practice chiropractic' ... shall authorize the holder thereof to practice chiropractic in the State of California as taught in chiropractic schools or colleges; and, also, to use all necessary mechanical, and hygienic and sanitary measures incident to the care of the body, but shall not authorize the practice of medicine, surgery, osteopathy, dentistry or optometry, nor the use of any drug or medicine now or hereafter included in materia medica."

FN 3. In support of their position plaintiffs rely heavily on dicta in Evans v. McGranaghan, 4 Cal.App.2d 202 [41 P.2d 937]. These dicta, however, never became the prevailing law. See comment on Evans in People v. Fowler, 32 Cal.App.2d Supp. 737 [84 P.2d 326] at p. 747 and authorities cited herein in support of our decision on this point.

FN 4. Section 2141, Business and Professions Code, reads: "Any person, who practices or attempts to practice, or who advertises or holds himself out as practicing, any system or mode of treating the sick or afflicted in this State, or who diagnoses, treats, operates for, or prescribes for any ailment, blemish, deformity, disease, disfigurement, disorder, injury, or other mental or physical condition of any person, without having at the time of

so doing a valid, unrevoked certificate as provided in this chapter, is guilty of a misdemeanor."

FN 5. Plaintiffs rely heavily on People v. Mills, 74 Cal.App. 353 [240 P. 296]. But they interpret it too broadly. It does not hold that the possession of a chiropractic license is a defense to the performance of surgery or the practice of medicine. The opinion says (p. 357): "... if a defendant [is] charged under section 17 of the Medical Practice Act and if it be found that he is following the system used by chiropractors [i.e. that he is practicing chiropractic], then his complete defense is the showing that he holds a certificate from the chiropractic board."

FN 6. The regulation is found in title 16, chapter 4, of the California Administrative Code. It provides: "302. Definitions. (a) Practice of Chiropractic: The basic principle of chiropractic is the maintenance of structural and functional integrity of the nervous system. The practice of chiropractic consists of the use of any and all subjects enumerated in Section 5 and referred to any and all other sections of the act."

FN 7. Argument of G. A. Lynch in Favor of Proposed Chiropractic Act; Ballot Pamphlet issued by Secretary of State for the November 7, 1922, election.

FN 8. "Although childbirth is not a disease, but a normal function of women, yet the practice of medicine does not appertain exclusively to disease, and obstetrics as a matter of common knowledge has long been treated as a highly important branch of the science of medicine." (Commonwealth v. Porn, 196 Mass. 326 [82 N.E. 31, 13 Ann.Cas. 569].) The proponents of the Chiropractic Act in their argument to the people prior to the general election in 1922 did not dispute this proposition for they said the proposed act "prohibits ... the practice of obstetrics by chiropractors." (See footnote 7, supra.)

FN 9. Webster's Third New International Dictionary (1961) at page 765 defines "episiotomy" as a "surgical incision of the vulvar orifice for obstetrical purposes during parturition."

FN 10. Neither of these questions was mentioned in the Pretrial Conference Order, dated June 2, 1961. This order stated, inter alia, that "It is stipulated ... that any issues raised in the pleadings which are not set forth in this pre-trial order are waived."

Cases Citing "213 Cal.App.2d 195":

- Tain v. State Bd. of Chiropractic Examiners (2005) *

Jun. 22, 2005. No. A106656.

- 130 Cal.App.4th 609

Tain v. State Bd. of Chiropractic Examiners (2005) 130 Cal.App.4th 609

Jun. 22, 2005. No. A106656.

- 18 Cal.3d 479

Bowland v. Municipal Court

December 6, 1976. S.F. No. 23484.

- 25 Cal.3d 465

Bendix Forest Products Corp. v. Division of Occupational Saf. & Health

October 16, 1979. S.F. No. 24018.

- 10 Cal.App.3d 433

Stevenson v. State Bd. of Medical Examiners

July 23, 1970. Civ. No. 12019.

- 11 Cal.App.3d 25

Cleveland Chiropractic College v. State Bd. of Chiropractic Examiners

September 3, 1970. Civ. No. 34281.

- 40 Cal.App.3d 701

California Chiropractic Assn. v. Board of Administration

July 17, 1974. Civ. No. 14396.

- 53 Cal.App.3d 661

Sanders v. Pacific Gas & Elec. Co.

December 12, 1975. Civ. No. 36576.

- 205 Cal.App.3d 783

Ammon v. Superior Court

October 31, 1988. No. A043068.

- 222 Cal.App.2d 567

People v. Bernhardt

Nov. 22, 1963. Crim. No. 8335.

- 240 Cal.App.2d 914

Hingsbergen v. State Personnel Bd.

Mar. 21, 1966. Civ. No. 22735.

CREES, a nonprofit corporation, et al., Plaintiffs and Appellants,

v.

CALIFORNIA STATE BOARD OF MEDICAL EXAMINERS et al., Defendants and Respondents.

Civ. 26230.

District Court of Appeal, Second District, Division 2, California.

Feb. 20, 1963.

Rehearing Denied March 21, 1963.

Hearing Denied April 17, 1963.

Declaratory judgment action by doctors of chiropractic and others for declaratory and injunctive relief respecting certain alleged rights, immunities and privileges claimed by plaintiff doctors of chiropractic under statutes. The Superior Court of Los Angeles County, Walter C. Allen, J., entered a judgment adverse to the plaintiffs who appealed. The District Court of Appeal, Fox, P. J., held that licensed chiropractors were not authorized to practice medicine or surgery or use drugs, and statute making it a misdemeanor for person to prescribe specified treatment for ailments without license of Board of Medical Practice is not unconstitutional.

Affirmed.

1. Physicians and Surgeons ⇐6(1)

Statute authorizing licensee to practice chiropractic as taught in chiropractic schools or colleges does not authorize practice by licensed chiropractor of anything that he has been taught in chiropractic school, and practice authorized must be chiropractic and must also be as taught in chiropractic schools or colleges. West's Ann.Bus. & Prof.Code, § 1000–7.

2. Physicians and Surgeons ⇐6(1)

Statutory provision allowing licensed chiropractor to use all necessary mechanical, hygienic and sanitary measures incident to care of body allows use of measures which do not invade field of medicine and surgery, regardless of whether or not additional phases of healing art, including medicine and surgery or use of drugs, have been taught in chiropractic schools or colleges. West's Ann.Bus. & Prof.Code, § 1000–7.

3. Physicians and Surgeons ⇐6(10)

Practices which have developed in chiropractic profession were not admissible to determine acts and procedures that chiropractors could properly perform under their chiropractic license. West's Ann. Bus. & Prof.Code, § 1000–7.

4. Declaratory Judgment ⇐326

Respective contentions of parties may be adjudicated in action for declaratory relief by means of motion for judgment on pleadings.

5. Physicians and Surgeons ⇐6(8)

Possession of chiropractic license is not defense to charge of violating statute making it misdemeanor for person not holding license issued in conformity with statute to engage in any practice or system or mode of treating sick or afflicted. West's Ann.Bus. & Prof.Code, §§ 1000–7, 2141.

6. Physicians and Surgeons ⇐6(1)

Only effect of Chiropractic Act on Medical Practice Act is to create limited exception to prohibition against practicing healing art without a license from Board of Medical Examiners, and allows holder of license to practice chiropractic and not medicine or surgery. West's Ann.Bus. & Prof.Code, §§ 1000–7, 2141.

7. Physicians and Surgeons ⇐10

Regulation adopted by Board of Chiropractic Examiners which purported to substantially expand area of professional activity on part of chiropractors and the means and facilities at their disposal in practice of healing art was invalid insofar as it purported to alter or enlarge scope of practice of chiropractic under Chiropractic Act. West's Ann.Bus. & Prof.Code, §§ 1000–7, 2141.

8. Constitutional Law ⇐75

Trial court properly refused, in action for declaratory and injunctive relief respecting rights, immunities and privileges claimed by plaintiff doctors of chiropractic, to refer questions of extent and scope of chiropractic to Chiropractic Board for its consideration and recommendation before it took final action, as such procedure would have violated principle of separation of legislative and judicial powers. West's Ann. Bus. & Prof.Code, §§ 1000, 1000–1 to 1000–19, 1001, 2000–2490.

9. Physicians and Surgeons ⇐6(1)

Duly licensed chiropractors, who do not hold themselves out as physicians and surgeons but only as doctors of chiropractic, may violate Medical Practice Act by performing procedures forbidden by statute which makes it a misdemeanor for person to diagnose, treat, operate for, or prescribe for any ailment, disorder, injury, or other mental or physical condition without a license from Board of Medical Examiners. West's Ann.Bus. & Prof.Code, §§ 1000–7, 2141.

10. Statutes ⇐217.1

Official argument presented to voters in favor of adoption of act could be considered as an aid in interpretation of that act.

11. Physicians and Surgeons ⇐6(1)

Chiropractor is not authorized to use drugs or medicines and is not authorized to perform surgery. West's Ann.Bus. & Prof. Code, § 1000–7.

12. Physicians and Surgeons ⇐6(1)

License to practice chiropractic does not authorize practice of obstetrics, severance of umbilical cord or performance of an episiotomy. West's Ann.Bus. & Prof Code, § 1000–7.

13. Evidence ⇐9

It is matter of common knowledge that obstetrics has long been treated as a highly important branch of science of medicine.

14. Physicians and Surgeons ⇐6(1)

Because licensed chiropractor is not authorized to use drugs or medicines at all he may not use drugs or medicines for diagnosis, as aid in practice of chiropractic for emergencies, or for clinical research West's Ann.Bus. & Prof.Code, §§ 13, 1000–7.

15. Declaratory Judgment ⇐390

Where court in declaratory judgment action was not called upon by pleadings or pretrial conference order and did not undertake to determine substances included in materia medica, and judgment was signed and filed before effective date of statute which plaintiffs contended excluded certain substances normally included in materia medica, that statute could have no bearing on judgment. West's Ann.Bus. & Prof. Code, §§ 13, 1000–7.

16. Criminal Law ⇐13

Statute making it misdemeanor for anyone to diagnose, treat, operate for, or prescribe for any ailment, disease, disorder, injury, or other mental or physical condition without a license from Board of Medical Examiners is not unconstitutionally vague, and was not rendered vague because of enactment of Chiropractic Act creating a limited exception thereto. West's Ann. Bus. & Prof.Code, § 2141.

17. Appeal and Error ⇐169

Where issues were not before trial court and no evidence relating thereto was offered, appellate court was not called upon to consider issues.

18. Criminal Law ⇐330

Ordinarily it is appropriate for prosecution to rest upon proving that person has committed generally prohibited act, and it is for defense to assume burden of proving

... legal excuse or that defense falls ... an excepted class.

Constitutional Law ⇨275(1)
Physicians and Surgeons ⇨2

Statute making it a misdemeanor to ...ose, treat, operate for or prescribe for ...ment, deformity, disease, injury or ... mental or physical condition without ... from Board of Medical Examiners ... not violate due process and does not ... an unconscionable burden upon li... chiropractor, accused of violating ... to prove that he was acting within its ...ization. West's Ann.Bus. & Prof. ... §§ 112, 162, 1001, 2141; West's Ann. ... Civ.Proc. § 1875, subd. 3.

Constitutional Law ⇨230(2)
Physicians and Surgeons ⇨2

Statute making it a misdemeanor for ... to diagnose, treat, operate for, or ...cribe for any injuries, disease, or men... physical condition without license ... Board of Medical Examiners does not ... equal protection of law to licensed ...practors. West's Ann.Bus. & Prof. ... § 2141.

Constitutional Law ⇨208(3)

Legislature may classify in course of ...ating different groups of persons, and ... classification will be sustained unless ... found to discriminate unreasonably in ... of one group and against another.

Appeal and Error ⇨171(1)

Plaintiff chiropractors could not com... on appeal in declaratory judgment ac... that court erred in failing to make dec...ion as to meaning of statutory term ... they never requested such declara... and by stipulation contained in pre... conference order had waived any issue ... set forth in pre-trial order.

...han Newby, Jr., Los Angeles, for ...nts.

Stanley Mosk, Atty. Gen., E. G. Funke, Asst. Atty. Gen., Conrad Lee Klein, Deputy Atty. Gen., for respondents.

Behm & Callan, Anaheim, and George W. Kell, Monterey Park, amici curiae on behalf of appellants.

FOX, Presiding Justice.

This is an appeal by plaintiffs from a judgment in an action for a declaration of rights.

Plaintiffs are a California nonprofit corporation composed of practicing doctors of chiropractic and seven individual licentiates of the Chiropractic Board. They brought this action for declaratory and injunctive relief against defendants, who are the California State Board of Medical Examiners, five members of that Board, the California State Board of Chiropractic Examiners and two members of that Board. Plaintiffs sought to have certain rights, immunities and privileges, claimed by plaintiff doctors of chiropractic under the Medical Practice Act (Bus. and Prof.Code, §§ 2000–2490) and the Chiropractic Initiative Act (Bus. and Prof.Code, §§ 1000, 1000–1 to 1000–19, 1001), defined and declared. Plaintiffs also sought injunctions against the two defendant Boards to enjoin them from interfering with said asserted rights.

A joint pre-trial statement was prepared and signed by the parties. The pre-trial judge, who was also the trial judge, made a pre-trial conference order[1] modifying the pre-trial statement and adopting portions of the pleadings. At the opening of the trial, stipulations were made: (1) That if called to testify the seven plaintiff Doctors of Chiropractic would each testify that each would in the practice of Chiropractic perform the acts and use the drugs and medicines mentioned in the plaintiffs' contentions in the pre-trial statement and would contend that the same was a part of Chiropractic; and (2) That if the investigator for the California State Medical Board

[1] It was stipulated that the only issues to be determined by the trial court were those set forth in its pre-trial conference order, any others being expressly waived.

were called on the witness stand, he would testify that if plaintiffs did perform such acts and use such drugs as set forth in plaintiffs' contentions in the pre-trial statement, he would, on behalf of the Board, investigate the same and ask the proper authorities for issuance of a criminal complaint based on such acts insofar as they would appear to violate the Medical Practice Act.

Defendants made a motion for judgment on the pleadings which was denied. Defendants then moved for a declaration of rights and duties of the parties based upon (1) the allegations of the complaint; (2) the answer thereto; (3) the pre-trial order; and (4) the issues set forth in the pre-trial order. Plaintiffs made several offers of proof involving proposed testimony primarily concerning practices in the science of chiropractic and present and past curricula at colleges of chiropractic. Defendant Board of Medical Examiners objected to the offers of proof on the grounds of immateriality and irrelevancy. The objection was sustained. The court then granted the motion of defendants for a declaration of rights and duties of the parties. The court made findings of fact and conclusions of law, and gave judgment for defendants. The pertinent portions of the judgment are:

"IT IS ORDERED, ADJUDGED AND DECREED that the respective rights and duties of the parties are as follows:

"A. That an actual controversy exists between the plaintiffs and the defendants herein relating to their respective legal duties and rights.

"B. Section 2141 of the Business and Professions Code applies to plaintiff doctors of chiropractic and is not unconstitutional when applied to plaintiffs or any of them.

"C. Persons holding valid, unrevoked licenses from the Board of Chiropractic Examiners can be prosecuted under the State Medical Practice Act for violations thereof.

* * * * * *

"E. Duly licensed chiropractors who do not hold themselves out as physicians and surgeons, but only as 'doctors of chiropractic' or 'D. C.' may, nevertheless, be in violation of the State Medical Practice Act.

"F. Licensed chiropractors are not authorized by their license to use any drugs or medicines in materia medica or the dangerous or hypnotic drugs mentioned in section 4211 of the Business and Professions Code or the narcotics referred to in section 11500 of the Health and Safety Code for: (1) diagnosis; (2) as an aid in the practice of chiropractic; (3) for emergencies; or (4) for clinical research.

"G. Licensed chiropractors are not authorized by their license to practice obstetrics or to sever the umbilical cord in any childbirth or to perform episiotomy.

"H. A duly licensed chiropractor may only practice or attempt to practice or hold himself out as practicing a system of treatment by manipulation of the joints of the human body by manipulation of anatomical displacements, articulation of the spinal column, including its vertebrae and cord, and he may use all necessary, mechanical, hygienic and sanitary measures incident to the care of the body in connection with said system of treatment, but not for the purpose of treatment, and not including measures as would constitute the practice of medicine, surgery, osteopathy, dentistry, or optometry, and without the use of any drug or medicine included in materia medica.

"A duly licensed chiropractor may make use of light, air, water, rest, heat, diet, exercise, massage and physical culture, but only in connection with and incident to the practice of chiropractic as hereinabove set forth.

"I. It is true that chiropractic is not a static system of healing and that it may advance and change in technique, teaching, learning, and mode of treatment within the limits of chiropractic as set forth in paragraph H above. It may not advance into the fields of medicine, surgery, osteopathy, dentistry, or optometry.

"J. Plaintiffs have failed to state facts sufficient to constitute a cause of action for injunction against defendants.

"K. None of the plaintiffs are entitled to any injunctive relief against any of the defendants; defendants and their agents may proceed against plaintiffs in the event that plaintiffs exceed the scope of their respective licenses to practice chiropractic and violate the State Medical Practice Act."

Since the questions involved in this case are of fundamental importance to the health and safety of the public as well as to the profession of chiropractic, this court has granted the request of the California Chiropractic Association, which represents itself as having a membership of 600 practitioners of chiropractic, to submit a brief as *amicus curiae*.

Plaintiffs contend on appeal that the trial court erred in (1) refusing to permit introduction of evidence by plaintiffs in support of their contentions and claims; (2) granting the motion of defendants for a declaration of rights and duties of the parties based on the pleadings and stipulations; (3) in making the declarations set forth in paragraphs B, C, E, F, G, H, J and K of the judgment, supra; and (4) failing to make a declaration as to the meaning of the term "practice" as contained in the last part of section 7 of the Chiropractic Act (Bus. and Prof.Code, § 1000–7; Deering's Gen.Laws, Act 4811, § 7.)[2]

In addition, the *amicus curiae* cites as alleged error the failure of the trial court to refer questions of the extent and scope of chiropractic to the California State Board of Chiropractic Examiners before taking further action in the proceedings below.

INTRODUCTION OF EVIDENCE

Plaintiffs base their contention that evidence concerning practices in the science of chiropractic and present and past curricula at colleges of chiropractic should have been heard by the trial court on section 1000–7 of the Business and Professions Code, which provides that a license issued by the Board of Chiropractic Examiners shall authorize the holder thereof "to practice chiropractic in the State of California *as taught in chiropractic schools or colleges* * * *." (Emphasis added.) They contend that to establish what is chiropractic, it is necessary, *inter alia*, to take extrinsic evidence as to what is and has been taught in chiropractic educational institutions, and the practices that have developed in the profession.

Their position, however, is not sustained by the prevailing authorities. Section 7 of the Chiropractic Act (Bus. and Prof. Code, § 1000–7) contains the only provision which undertakes either to define or describe chiropractic or to declare what is authorized by a license issued under the act. The authorization is in two parts: (1) "to practice chiropractic * * * as taught in chiropractic schools or colleges"; and (2) "to use all necessary mechanical, and hygienic and sanitary measures incident to the care of the body."

[1] The first part of this authorization, plaintiffs contend, authorizes the practice

2. The pertinent portion of the section provides that the "* * * 'License to practice chiropractic' * * * shall authorize the holder thereof to practice chiropractic in the State of California as taught in chiropractic schools or colleges; and, also, to use all necessary mechanical, and hygienic and sanitary measures incident to the care of the body, but shall not authorize the practice of medicine, surgery, osteopathy, dentistry or optometry, nor the use of any drug or medicine now or hereafter included in materia medica."

by a licensed chiropractor of anything that he has been taught in chiropractic schools.[3] As said in People v. Fowler, 32 Cal.App.2d Supp. 737, 745, 84 P.2d 326, 331: "This is too broad an interpretation of the provision. It contains two expressions, each of which has a limiting, as well as an authorizing, effect. The practice authorized must be 'chiropractic,' and it must also be 'as taught in chiropractic schools or colleges.' Neither of these expressions can rule the meaning of the statute, to the exclusion of the other." The court pointed out (pp. 746–747, 84 P.2d p. 331) that there was a "general consensus of definitions, current at and before the time the Chiropractic Act was adopted [which] shows what was meant by the term 'chiropractic' when used in that act;" also, that "'[t]he words of a statute must be taken in the sense in which they were understood at the time when the statute was enacted.' [Citations.]"; and that "[w]ords of common use, when found in a statute, are to be taken in their ordinary and general sense. [Citations.]" The court explained that "[t]he effect of the words 'as taught in chiropractic schools or colleges' is not to set at large the signification of 'chiropractic,' leaving the schools and colleges to fix upon it any meaning they choose. Were the word 'chiropractic' of unknown, ambiguous or doubtful meaning, this clause * * * might serve to provide a means of defining or fixing its signification, but there here is no such lack of clarity. The scope of chiropractic being well known, the schools and colleges, so far as the authorization of the chiropractor's license is concerned, must stay within its boundaries; they cannot exceed or enlarge them. The matter left to them [the schools and colleges] is merely the ascertainment and selection of such among the possible modes of doing what is comprehended within that term as may seem to them best and most desirable, and so the fixing of the standards of action in that respect to be followed by chiropractic licensees."

The position of the court in Fowler relative to the asserted right to practice whatever is taught in chiropractic educational institutions finds support in the case of In re Hartman, 10 Cal.App.2d 213, 51 P.2d 1104. At page 217, 51 P.2d at page 1105 the court says: "While the section [section 7] contains the additional clause 'as taught in Chiropractic schools or colleges,' the entire section must be taken as a whole and it cannot be taken as authorizing a license to do anything and everything that might be taught in such a school. * * * It is not sufficient that a particular practice is taught in such a school. Under the terms of the statute it must meet the further test that it is a part of chiropractic, whatever that philosophy or method may be, and, further, that it shall not violate the provision which expressly forbids the practice of medicine. If such a practice is not a part of chiropractic but does constitute the practice of medicine, it is not authorized under this license even though it may be taught in such a school."

[2] In Fowler, the court continues (32 Cal.App.2d Supp. p. 747, 84 P.2d p. 332): "The second part of the authorization contained in section 7 of the act [Bus. and Prof.Code § 1000–7], 'to use all necessary mechanical, and hygienic and sanitary measures incident to the care of the body', is not a definition of, but an addition to, ['chiropractic'] as used in the previous part of section 7 and authorizes chiropractors to use measures which would not otherwise be within the scope of their licenses."

In sum, Fowler states (p. 748, 84 P.2d p. 332): "[T]he chiropractor is limited to the practice of chiropractic and the use of mechanical, hygienic and sanitary measures incident to the care of the body, which do not invade the field of medicine and sur-

3. In support of their position plaintiffs rely heavily on dicta in Evans v. McGranaghan, 4 Cal.App.2d 202, 41 P.2d 937. This dicta, however, never became the prevailing law. See comment on Evans in People v. Fowler, 32 Cal.App.2d Supp. 737, at p. 747, 84 P.2d 326, at 331 and authorities cited herein in support of our decision on this point.

gery, irrespective of whether or not additional phases of the healing art, including medicine and surgery or the use of drugs, may have been taught in chiropractic schools or colleges" and, we should add, irrespective of whether any such additional phases have actually been used by some chiropractors illegally as part of professional treatment.

The principle enunciated in the Fowler case, viz., that the "* * * general consensus of definitions, current at and before the time the Chiropractic Act was adopted, shows what was meant by the term 'chiropractic' when used in that act" (People v. Fowler, supra, at 746, 84 P.2d at 331), has been cited and followed by the courts of this state through the intervening years. "[T]he limits of permissible practice by the holder of a chiropractic license * * * do not extend * * * beyond the scope of chiropractic as that term was understood and defined in 1922, and the ambiguous attempts of chiropractic schools or colleges to extend them by teaching other subjects under the guise of chiropractic must fail, so long as the statute remains as it is now." (People v. Mangiagli, 97 Cal.App.2d Supp. 935, 939, 218 P.2d 1025, 1028; see, also People v. Nunn, 65 Cal.App.2d 188, 194–195, 150 P.2d 476.) "The terminology [of the 1922 initiative Chiropractic Act] is that of common usage * * *." (Jacobsen v. Board of Chiropractic Examiners, 169 Cal.App.2d 389, 392, 337 P.2d 233, 235.) "[T]he term 'chiropractic' includes only the meaning of that term as it was generally understood in 1922 when the Chiropractic Act was adopted." (People v. Augusto, 193 Cal.App.2d 253, 257–258, 14 Cal.Rptr. 284, 287, hear. den.)

This principle of the Fowler case has also been adopted by courts in other jurisdictions, which have also cited Fowler with approval. In State ex rel. Wheat v. Moore, 154 Kan. 193, 117 P.2d 598, the phrase "as taught and practiced in * * * colleges of osteopathy" was involved. The Kansas Supreme Court stated (117 P.2d at 604): "The words of a statute must be taken in the sense in which they were understood at the time when the statute was enacted. * * * (People v. Fowler, supra.)" At the same page, the Kansas court also cites Fowler as a "well-considered" opinion for its distinguishing of various forms of the healing arts. One year earlier, in Burke v. Kansas State Osteopathic Association, 111 F.2d 250 (1940), the Circuit Court of Appeals for the Tenth Circuit had dealt with the same question of construction as involved in the Moore case. In Burke, the federal court stated (111 F.2d p. 256): "[T]he mere fact that these subjects were taught in the osteopathic college is not evidence that the graduates of that college had a right to practice anything but osteopathy. In many of the leading schools of America to-day, the principles of communism, fascisms and other isms inimical to our form of government are examined and discussed. Not that these schools desire their students to believe these isms but that the students may know what they are and discern between these objectionable theories of government and proper forms of government."

The Supreme Court of Wisconsin cited Fowler in State v. Grayson, 5 Wis.2d 203, 92 N.W.2d 272. In that case, the court was called upon to rule with respect to a definition of "chiropractic" similar to that in Fowler. In holding the definition to be "fully consistent" with those found in dictionaries and encyclopedias, the court said (92 N.W.2d at 277): "In People v. Fowler * * * a California intermediate appellate court was called upon to determine the meaning of the word 'chiropractic' * * *. The court arrived at a definition very similar in scope to that [in this case] * * *. We can perceive no clear cut legislative intent that * * * [the] definition [of 'chiropractic'] must * * * [be] so broad in scope as to permit every practice or procedure that may be taught in any chiropractic college."

In Smith v. State Board of Medicine of Idaho, 74 Idaho 191, 259 P.2d 1033, the Idaho Supreme Court cited Fowler as support for affirming a conviction of a "na-

turopath" for practicing medicine. Fowler and In re Hartman, supra, are cited by the Nebraska Supreme Court in State ex rel. Johnson v. Wagner, 139 Neb. 471, 297 N.W. 906, where the scope of "osteopathy" was in question. There, the court stated (p. 910): "The scope of osteopathy is well known and schools and colleges of osteopathy must stay within its boundaries, they cannot enlarge them. People v. Fowler * * *." The statute involved in Wagner contained the phrase "as taught in * * * Osteopathic colleges * * *" The Nebraska court pointed out that "[t]he fact that branches of medicine and surgery may be taught to increase the knowledge of the student * * * will not warrant him to invade those fields on the theory that they constitute the practice of osteopathy." (State ex rel. Johnson v. Wagner, supra, 297 N.W. at p. 910.) See, also Lynch v. State, 19 Wash.2d 802, 145 P.2d 265 (citing Fowler, 145 P.2d at p. 270); State v. Boston, 226 Iowa 429, 278 N.W. 291, 284 N.W. 143; State Board of Medical Examiners v. McHenery (La. App.), 69 So.2d 592; Commonwealth v. Zimmerman, 221 Mass. 184, 108 N.E. 893.

[3] There is patently no merit in plaintiffs' claim that the practices that have developed in this profession are admissible in evidence to determine the acts and procedures they may properly perform under their chiropractic license. In Jacobsen v. Board of Chiropractic Examiners, 169 Cal. App.2d 389, 337 P.2d 233 (1959), a chiropractor was charged with violating the Chiropractic Act for advertising the cure of sexual disorders. He sought to introduce some 60 similar advertisements of other chiropractors throughout the state. His purpose was to show the practice in the profession, arguing that thereby he could establish the standard exacted by law. The court, at page 395, 337 P.2d at page 237 held the offer was properly rejected and stated: "[W]e know of no rule which says that the conduct of those whose activities are regulated by the statute can aid in its construction."

From the foregoing, it is abundantly clear that the trial court's ruling on plaintiffs' proffered evidence was correct.

PROCEDURE

[4] There is no merit whatever in plaintiffs' apparent suggestion that the court erred in declaring the rights and duties of the parties on the basis of the pleadings, the stipulations and the pre-trial conference order. "The propriety of adjudicating the respective contentions of the parties upon the pleadings in an action for declaratory relief by means of a motion for judgment on the pleadings is recognized and established in this state." (Wilson v. Board of Retirement, 156 Cal.App.2d 195, 201, 319 P.2d 426, 429.)

SECTION 2141, BUSINESS AND PROFESSIONS CODE[4]

[5, 6] Plaintiffs fallaciously argue that section 2141, Bus. and Prof.Code, does not apply to licensed chiropractors and that the possession of such a license is a complete defense to a charge of violating this section.[5] By its express provisions section

4. Section 2141, Bus. and Prof.Code, reads: "Any person, who practices or attempts to practice, or who advertises or holds himself out as practicing, any system or mode of treating the sick or afflicted in this State, or who diagnoses, treats, operates for, or prescribes for any ailment, blemish, deformity, disease, disfigurement, disorder, injury, or other mental or physical condition of any person, without having at the time of so doing a valid, unrevoked certificate as provided in this chapter, is guilty of a misdemeanor."

5. Plaintiffs rely heavily on People v. Mills, 74 Cal.App. 353, 240 P. 296. But they interpret it too broadly. It does not hold that the possession of a chiropractic license is a defense to the performance of surgery or the practice of medicine. The opinion says (p. 357, 240 P. p. 297): "* * * if a defendant [is] charged under section 17 of the Medical Practice Act and if it be found that he is following the system used by chiropractors [i. e. that he is practicing chiropractic], then his complete defense is the showing that he holds a certificate from the chiropractic board."

[illegible] makes it a misdemeanor for any person not holding a license issued by the Board of Medical Examiners to engage in the practice any system or mode of treating the sick or afflicted. However, at the general election of November 7, 1922, the people of this state approved the Chiropractic Act which created the Board of Chiropractic Examiners with authority to issue licenses to practice chiropractic. (Chiropractic Act, sect. 7.) Plaintiffs' argument finds no support in the language in either the Chiropractic Act or the Medical Practice Act. The only effect of the enactment of the Chiropractic Act on the Medical Practice Act was to create a limited exception to the prohibition against practicing a healing art without a license from the Board of Medical Examiners; that a holder of a license to practice chiropractic may practice chiropractic (not medicine or surgery); and that is the limit of the exception. (People v. Machado, 99 Cal.App. 702, 279 P. 228; People v. Augusto, 193 Cal.App.2d 253, 257, 14 Cal.Rptr. 284; People v. Fowler, supra, 32 Cal.App.2d Supp. p. [illegible] 84 P.2d p. 329; People v. Mangiagli, supra, 97 Cal.App.2d Supp. p. 938; 218 P.2d p. 27; In re Hartman, supra, 10 Cal.App.2d 217, 51 P.2d p. 1105; People v. Nunn, supra, 65 Cal.App.2d p. 194, 150 P.2d p. [illegible] In Machado, defendant, a chiropractic was convicted of having violated the Medical Practice Act. He offered in evidence his chiropractic license. His offer was rejected on the ground the same was immaterial since the possession of a chiropractic license constituted no defense to a violation of the Medical Practice Act. This ruling was sustained on appeal (99 Cal.App. 704–706, 279 P. p. 229). Reference to the statutes and the foregoing authorities demonstrates that there is no legal support for plaintiffs' argument, and that the trial court correctly declared "Section 2141 of the Business and Professions Code applies to plaintiff doctors of chiropractic" and that "[p]ersons holding valid, unrevoked licenses from the Board of Chiropractic Examiners can be prosecuted under the State Medical Practice Act for violations thereof."

VALIDITY OF SECTION 302 OF THE ADMINISTRATIVE CODE

[7, 8] In 1954 the Board of Chiropractic Examiners adopted a regulation [6] which purported to expand substantially the area of professional activity on the part of chiropractors and the means and facilities at their disposal in their practice of the healing art. The trial court held that this regulation was invalid insofar as it purported to alter or enlarge the scope of the practice of chiropractic under the Chiropractic Act. This decision is correct. (People v. Mangiagli, supra; Duskin v. Board of Dry Cleaners, 58 A.C. 156, 23 Cal.Rptr. 404, 373 P.2d 468.) In Mangiagli, the court stated on rehearing (97 Cal.App.2d Supp. p. 943, 218 P.2d p. 1030): "'An administrative officer may not make a rule or regulation that alters or enlarges the terms of a legislative [or initiative] enactment.' [citations]" In Duskin, the court, in dealing with a regulation of another administrative agency, held: "Thus the regulation * * * insofar as it attempted to enlarge the terms of the enabling statute, * * * is invalid." (p. 166, 23 Cal.Rptr. p. 409, 373 P.2d p. 473.) This determination adequately disposes of the contention made in the brief of *amicus curiae* to the effect that "questions of the extent and scope of chiropractic" should have been referred to the Chiropractic Board for its consideration and recommendation to the court before it took final action. Furthermore, such a procedure

[6] The regulation is found in Title 16, Chapter 4, of the California Administrative Code. It provides: "302. Definitions. (a) Practice of Chiropractic: The basic principle of chiropractic is the maintenance of structural and functional integrity of the nervous system. The practice of chiropractic consists of the use of any and all subjects enumerated in Section 5 and referred to any and all other sections of the act."

would have been totally out of harmony with the principle of the separation of legislative and judicial powers.

MAY A CHIROPRACTOR WHO HOLDS HIMSELF OUT ONLY AS SUCH EVER BE GUILTY OF VIOLATING THE MEDICAL PRACTICE ACT?

[9] Plaintiffs vainly challenge the declaration of the trial court that: "Duly licensed chiropractors who do not hold themselves out as physicians and surgeons, but only as 'doctors of chiropractic' or 'D.C.,' may, nevertheless, be in violation of the State Medical Practice Act." This declaration is so obviously correct that it requires but brief comment. As previously pointed out a chiropractic license entitles the holder thereof to perform certain acts in the practice of his particular healing art; it does not, however, authorize him to perform acts or administer treatment beyond the scope of the authority conferred by his certificate. Specifically, one who, *inter alia*, "diagnoses, treats, operates for, or prescribes for any ailment, blemish, deformity, disease, disfigurement, disorder, injury, or other mental or physical condition of any person" must have a license from the Board of Medical Examiners (Bus. and Prof. Code, § 2141.) One who performs any of these acts or procedures without such a license is guilty of a misdemeanor (§ 2141). This is the practice of medicine, and section 7 of the Chiropractic Act provides that the "'License to practice chiropractic,' * * * shall not authorize the practice of medicine, surgery, * * *." It therefore follows that when a doctor of chiropractic does an act or performs a procedure forbidden by section 2141, Bus. and Prof.Code, except by one holding a license under the Medical Practice Act, he violates said act even though he does not hold himself out as a doctor of medicine. It is the doing of an act that is forbidden by law that constitutes the criminal offense. As pointed out in People v. Cantor, 198 Cal.App.2d Supp. 843, 848, 18 Cal.Rptr. 363, 366: "* * * a violation of the Medical Practice Act is not absolved by a concurrent statement that the violator is not a doctor [citation]." There is nothing in Ex parte Greenall, 153 Cal. 767, 96 P. 804, on which plaintiffs rely, that is contrary to these principles.

DOES A LICENSE TO PRACTICE CHIROPRACTIC AUTHORIZE THE HOLDER THEREOF: (1) TO USE DRUGS OR MEDICINES; OR (2) TO PRACTICE OBSTETRICS, SEVER THE UMBILICAL CORD, OR PERFORM EPISIOTOMY?

[10, 11] The initial answer to this question is found in section 7 of the Chiropractic Act as adopted by the people at the general election in November 1922. That section provides that the "'License to practice chiropractic,' * * * shall not authorize the practice of medicine, surgery * * * nor the use of any drug or medicine now or hereafter included in materia medica." In this connection it is appropriate to point out that in the official argument presented to the voters prior to the November 1922 election, in favor of the adoption of the Chiropractic Act, it was stated that the proposed act "prohibits the use of drugs, surgery or the practice of obstetrics by chiropractors * * *"[7] The official argument may be considered as an aid to an interpretation of an Act. (Beneficial Loan Society, Ltd. v. Haight, 215 Cal. 506, 515, 11 P.2d 857; People v. Fowler, supra, 32 Cal.App. 2d Supp. pp. 744–745, 84 P.2d p. 330) In People v. Augusto, 193 Cal.App.2d 253, pp. 257–258, 14 Cal.Rptr. 284, p. 287 the court points out that a chiropractor administers his treatment "'* * * with the hands, no drugs being administered.' [Citations.]" Thus it is crystal clear from the plain wording of the initiative act and the decisions in this state that a chiropractor is not author-

7. Argument of G. A. Lynch in Favor of Proposed Chiropractic Act; Ballot Pamphlet issued by Secretary of State for the November 7, 1922 election.

...ed to use drugs or medicines and it was ...ot intended that he should be so author... It is likewise equally clear that the ...er of a chiropractic license is not au...rized to perform surgery. The Chiro...ctic Act expressly so provides (sec. 7), ...the decisions so hold (People v. Fow... supra; People v. Nunn, supra). In the ...ter case this court stated (65 Cal.App.2d ...4, 150 P.2d p. 480): "By chapter 5, ...ion II of the Business and Profes... Code, a chiropractor cannot legally ...ice surgery." And the argument to ...oters shows that it was not contem... that chiropractors would be author...nder the initiative measure to practice ...ery.

[2, 13] It will be recalled that section 7 ...the Chiropractic Act also provides that ...nse to practice chiropractic shall not ...orize the practice of medicine. It is ...ent that these provisions do not au...e the practice of obstetrics,[8] the sever... of the umbilical cord or the perform... of an episiotomy.[9] These procedures ...fall in the medical-surgical field (see, ..., In re Hartman, supra; People v. ..., supra) which chiropractors may not ...ice.

...n an effort to fortify their position, ...intiffs emphasize the portion of section ...which provides that the holder of a li...se to practice chiropractic may "use all ...essary mechanical, and hygienic and ...itary measures incident to the care of ...body * * *." But this language does ...authorize either the use of drugs, medi..., the severance of tissues or the prac... of obstetrics. In this connection it should be noted that the last provision of section 7 (following the last quoted authorization) sets forth two very specific limitations: (1) that the license to practice chiropractic "shall not authorize the practice" of medicine or surgery; (2) "nor the use of any drug or medicine now or hereafter included in materia medica."

In re Hartman, supra, throws light on the aspect of our problem which deals with the use of all necessary mechanical, and hygienic and sanitary measures incident to the care of the body. Hartman was convicted, *inter alia*, of practicing medicine without a license, i. e., injecting an antitoxin into a human for the treatment of cancer in violation of the Medical Practice Act. On appeal from his conviction he argued, among other things, that the possession and use of the hypodermic syringe and needle was an authorized measure "incident" to the care of the body. In rejecting this contention the court stated (10 Cal. App.2d p. 217, 51 P.2d p. 1105): "We think this [hypodermic injection of antitoxin] cannot be held to be merely a measure incident to the care of the body within the meaning of that section, both because that clause of the section refers to general hygienic and sanitary measures, even though mechanical, and not to the treatment of diseases and ailments, and because the section contains the further limitation that the authorization granted shall not extend to the practice of medicine or surgery." In People v. Nunn, supra, the late Presiding Justice Moore of this court pointed out (65 Cal.App.2d p. 194, 150 P.2d p. 480) that a chiropractor "is limited to the use of mechanical hygienic measures incident to

8. "Although childbirth is not a disease, but a normal function of women, yet the practice of medicine does not appertain exclusively to disease, and obstetrics as a matter of common knowledge has long been treated as a highly important branch of the science of medicine." (Commonwealth v. Porn, 193 Mass. 326, 82 N.E. 31, 17 L.R.A.,N.S., 94.) The proponents of the Chiropractic Act in their argument to the people prior to the general election in 1922 did not dispute this proposition for they said the proposed act "prohibits * * * the practice of obstetrics by chiropractors." (See footnote 7, supra.)

9. Webster's Third New International Dictionary (1961) at page 765 defines "episiotomy" as a "surgical incision of the vulvar orifice for obstetrical purposes during parturition."

the care of the body which do not invade the field of medicine and surgery." From the foregoing it is apparent that the provision of section 7 of the Chiropractic Act authorizing a chiropractor to use mechanical, hygienic and sanitary measures incident to the care of the body does not authorize him to practice obstetrics, sever the umbilical cord or perform an episiotomy for this would be invading the field of medicine and surgery and this he may not do under the express provisions of said section.

[14] Although the Chiropractic Act provides that a license to practice chiropractic does not authorize the use of "any drug or medicine now or hereafter included in materia medica", plaintiffs nevertheless contend that a chiropractor may use such drugs or medicines for: (1) diagnosis; (2) as an aid in the practice of chiropractic; (3) for emergencies; or (4) for clinical research. But since a chiropractor is not authorized to use drugs and medicines at all, it follows that his license does not authorize him to use them in any of the above areas of his professional activities.

[15] Finally, in this connection, plaintiffs contend that the substances normally included in materia medica are now excluded by reason of the adoption of section 13 to the Business and Professions Code by the legislature in 1961. First, the court was not called upon by the pleadings or pretrial conference order, and did not undertake, to determine the substances included in materia medica. Second, section 13 did not become effective until September 15, 1961. The judgment herein was signed and filed on September 8, 1961. Thus the section was not in effect when the case was tried and the judgment rendered. Obviously, therefore, the section could have no bearing on the judgment.

From the foregoing it is manifest that the court's declaration of the rights of the parties in paragraphs F and G of the judgment is correct.

Plaintiffs complain, however, that the effect of paragraph G of the judgment is to selectively limit the nature and types of diseases, ailments and mental and bodily conditions which can be treated by licentiates of the Chiropractic Board. If the chiropractic profession desires to expand the scope of their professional activities so as to include the practice of obstetrics and the right to sever the umbilical cord and perform episiotomy they must turn to the people, from whom they received permission to exercise the privileges they now enjoy, for legitimation of these additional practices.

DECLARATION OF SCOPE OF PRACTICE, AND ACTS AND PROCEDURES THAT A CHIROPRACTOR MAY PROPERLY PERFORM

In paragraph H of the judgment the court declared the scope and nature of the practice of the healing art that may be engaged in by one who holds a license to practice chiropractic, and the character of the acts that such a licentiate may perform and the procedures that he may adopt and use. Each aspect of this declaration of a licentiate's rights and privileges and limitations thereon finds adequate support in the statutes and cases cited, quoted from and discussed herein. Plaintiffs' challenge to this declaration is essentially an attack on the principles upon which the declaration is based. Our previous discussion has demonstrated that each of these principles is sound. Further discussion of plaintiffs' attack on paragraph H would be largely repetitous and therefore unprofitable.

CONSTITUTIONALITY OF SECTION 2141, BUSINESS AND PROFESSIONS CODE

In attacking the constitutionality of section 2141, Bus. and Prof.Code, plaintiffs made two basic contentions: (1) the section is vague; and (2) it reflects an invalid classification. The same contentions were raised last year by plaintiff Dayan herein, after he had been convicted of violating section 2141. The Federal District Court dismissed his petition for writ of habeas

...ppeals. In affirming the judgment of dis... the Ninth Circuit Court of Appeals ...ately disposed of the invalid classifica... argument. The court stated: "We find ...onstitutional claims without merit. ...rnia can define the limits of its pro... and we find nothing unreasonable ... statutory classifications or the Cal... interpretations thereof. The statute ...fficient specificity. [Citation.] And ... no lack of due process in the Cal... proceedings." (Dayan v. People of State of California, 9 Cir., 293 F.2d 46. Emphasis added.)

[16] There is no merit whatever in the ...tion that section 2141 is unconstitu... vague. A reading of the section ...ows that people of common intelligence ... have no trouble in understanding ... was proscribed. In People v. Cantor, ... Cal.App.2d Supp. 843, 18 Cal.Rptr. 363, ...efendant, a hypnotist, was convicted ...racticing medicine without a license in ...tion of section 2141. On appeal he at... the section as being too vague and ...rtain. The court held, however (p. ... 18 Cal.Rptr. p. 368): "We find no ...eness or uncertainty in the words of § ... the argument of its unconstitution... on that ground must fall." Accord: ...ple v. Mangiagli, supra.)

Plaintiffs also argue section 2141 is ren... vague because of the enactment of ... Chiropractic Act creating a limited ex...tion thereto. This is not sound. The ...tion of a defense or exception by sec... 7 of the Chiropractic Act to the en...ment of section 2141 does not make ...basic prohibition found in section 2141 ...stitutionally vague. (See Dayan v. ...ple of the State of California, supra.)

Plaintiffs also complain that a "construc... crime" has been built up by the courts ...the aid of inference, implication and ...ited interpretation. Such an argument is not here apposite. Section 2141 is sufficiently definite and certain, and requires no interpretation to bring a chiropractor practicing medicine or surgery within the scope of its prohibition. A holding that a chiropractor who performed surgery could not be prosecuted under section 2141 would distort the letter and purpose of the section. (Cf. Newhouse v. Board of Osteopathic Examiners, 159 Cal.App.2d 728, 734–735, 324 P.2d 687.)

DUE PROCESS

[17–19] Plaintiffs argue that they are denied due process by the State's administration of the Medical Practice Act, especially section 2141, Bus. and Prof.Code, and by the courts in their interpretation and application of that section. Neither of these issues was before the trial court [10] and no evidence relating thereto was offered by either side. In this state of the record we are not called upon to consider plaintiffs' unsupported accusations of discrimination. But, argue the chiropractors, they have an "unconscionable burden" placed on them in attempting to prove their innocence of a charge of violating section 2141 because they must prove that they fall within an exception to the prohibition contained in that section. The law is clear that ordinarily it is appropriate for the prosecution to rest upon proving that a person has committed a generally prohibited act, and that it is for the defense to assume the burden of proving some legal excuse or that the defense falls within an excepted class. Now, let us see if any "unconscionable burden" is placed on a licensed chiropractor to prove his innocence after the prosecution has presented evidence that the chiropractor has engaged in a healing art. First the defendant must prove that he holds a license to practice chiropractic. He can do this by simply offering in evidence a certificate of the officer in charge of the records of the Board of Chiropractic Examiners (sec-

10. Neither of these questions was mentioned in the Pretrial Conference Order, dated June 2, 1961. This order stated, *inter alia*, that "It is stipulated * * * that any issues raised in the pleadings which are not set forth in this pretrial order are waived."

tion 162, Bus. and Prof.Code); or a copy of the official directory of licentiates (section 112, section 1001, Bus. and Prof.Code); or he could ask the court to take judicial notice of the issuance of his license (Code Civ.Proc., section 1875(3)). He would then urge that the act of "healing" that the People had proved that he had performed was within the scope of his license, i. e., that it was chiropractic. He has then carried his burden, which is patently not an "unconscionable" one.

The burden of a chiropractor to prove his license and that he was acting within its authorization is no more "unconscionable" than is the burden of a defendant attempting to prove self-defense, entrapment, or that he had no knowledge of the presence of narcotics in a car that he was driving. The burden on a chiropractor to prove that he falls within an exception to section 2141 is not such as to violate his constitutional right of due process. It is not at all comparable to that placed on the defendant in People v. Tilkin, 34 Cal.App.2d Supp. 743, 90 P.2d 148, on which plaintiffs rely.

EQUAL PROTECTION OF THE LAW

[20] Plaintiffs argue that if chiropractors can be prosecuted for violating section 2141, Bus. and Prof.Code, but drugless practitioners cannot, then there is an unreasonable discrimination prohibited by constitutional considerations. The simple answer to this argument is that section 2141 applies to everyone—chiropractors, drugless practitioners, barbers, truck drivers and everyone else.

Plaintiffs' argument is predicated upon a misconception of the significance of the decision in Cooper v. State Board of Medical Examiners, 35 Cal.2d 242, 217 P.2d 630, 18 A.L.R.2d 593. Plaintiffs take the position that the Cooper case "holds that a drugless practitioner who is licensed by the Medical Board cannot be charged with a violation of section 2141 for practicing outside the scope of his license * * *" The case does not so hold. It involved an administrative proceeding before the Board of Medical Examiners where the sole question was the propriety of that board's revocation of Cooper's license as a drugless practitioner. There was no issue, nor was there any discussion by the court of Cooper's liability to criminal prosecution for violation of section 2141. The court did, however, approve the board's finding that Cooper had violated section 2141 by giving a blood transfusion since this was outside the scope of his license. The court stated (p. 250, 217 P.2d p. 635): "* * * it appears that the administration of such transfusion by petitioner did constitute the practicing of a system of treating the sick or afflicted which petitioner's drugless practitioner's license did not authorize. (See People v. Nunn (1944), 65 Cal.App.2d 188, 194-195, 150 P.2d 476.)"

[21] In presenting their point plaintiffs say that all persons are entitled to "the protection of equal laws." In taking this position plaintiffs overlook the established principle that the legislature may classify in the course of regulating different groups of persons, and that the classification will be sustained unless it is found to discriminate unreasonably in favor of one group and against another. In each of the following cases one group within the healing arts challenged a statute on the ground that another group was receiving more favorable treatment, and that the classification resulted in unreasonable discrimination. In each case the equal protection challenge was rejected and the classification, based on different training or different types of practice, was upheld. (Crane v. Johnson, 242 U.S. 339, 37 S.Ct. 176, 61 L.Ed. 348; McNaughton v. Johnson, 242 U.S. 344, 37 S.Ct. 178, 61 L.Ed. 352; Louisiana State Board of Medical Examiners v. Fife, 162 La. 681, 111 So. 58, 54 A.L.R. 594, aff'd per cur. 274 U.S. 720, 47 S.Ct. 590, 71 L.Ed. 1321; Williamson v. Lee Optical of Oklahoma, 348 U.S. 483, 75 S.Ct. 461, 99 L.Ed. 563; Gamble v. Board of Osteopathic Examiners,

...21 215, 130 P.2d 382; Oosterveen v. ...of Medical Examiners, 112 Cal.App. ...246 P.2d 136; In re Rust, 181 Cal. ...P. 548; People v. Jordan, 172 Cal. ..., P. 451; Ex Parte Bohannon, 14 ..., 321, 111 P. 1039.)

...e instant case plaintiffs practice "one ..." of the healing art; drugless prac... practice another. The training of ...groups is different; their respective ... of the healing art are not the ... It cannot therefore be said that pro... separate classifications for the two ...sions and somewhat different regula... for each operates to discriminate un...ably against chiropractors. In this ...ion it is appropriate to note that ...mbers of each of these professions ...ot extend the nature and scope of ...practice beyond that which is author...y their respective licenses, and that ...mber of either group is subject to ...ial detriment if he does so.

...2) Plaintiffs are in no position to com...lain that the court erred in failing to make ...aration as to the meaning of the term ...ive" as used in the last part of section ... the Chiropractic Act which reads: ...shall not authorize the practice of ...ine, surgery, * * *," for the rea...that they never requested such declara... and by stipulation contained in the ...rial conference order waived any issue ...t forth "in this pre-trial order."

...ce plaintiffs' request for injunctive ... is predicated upon a declaration that ... have certain rights, immunities and ...ges under the Medical Practice Act ... the Chiropractic Initiative Act and ... in our opinion the trial court has cor...y declared the law adverse to their ...tions, it follows that the trial court ...rly denied injunctive relief.

...seems unnecessary to discuss certain ...eral and incidental arguments that ...riffs have made in their 112-page open... brief since they could not possibly affect ... outcome of this case and such discussion would only serve to unduly extend this opinion.

The judgment is affirmed.

ASHBURN and HERNDON, JJ., concur.

Preparation of this data base was made possible in part by the financial support of the
National Institute of Chiropractic Research
2950 North Seventh Street, Suite 200, Phoenix AZ 85014 USA
(602) 224-0296; www.nicr.org

Chronology of the CREES Decision

filename: CREES Chrono 03/10/22
word count: 2,665

Joseph C. Keating, Jr., Ph.D.
6135 N. Central Avenue, Phoenix AZ 85012-1232 USA
(602) 264-3182; JCKeating@aol.com

Color Code:
Red & Magenta: questionable or uncertain information
Green: for emphasis; **Blue**: not yet abstracted

Year/Volume Index to the *Journal of the National Chiropractic Association* (1949-1963), formerly *National Chiropractic Journal* (1939-1948), formerly *The Chiropractic Journal* (1933-1938), formerly *Journal of the International Chiropractic Congress* (1931-1932) and *Journal of the National Chiropractic Association* (1930-1932):

Year	Vol.	Year	Vol.	Year	Vol.	Year	Vol.
		1941	10	1951	21	1961	31
		1942	11	1952	22	1962	32
1933	1	1943	12	1953	23	1963	33
1934	3	1944	14	1954	24		
1935	4	1945	15	1955	25		
1936	5	1946	16	1956	26		
1937	6	1947	17	1957	27		
1938	7	1948	18	1958	28		
1939	8	1949	19	1959	29		
1940	9	1950	20	1960	30		

1957 (July): ***California Chiropractic Association Journal*** [13(3)] includes:
-full page ad (p. 16):

An Open Invitation!
CREES MEETING and LUNCHEON
Saturday July 13, 12:30 P.M.

All members of CREES and other doctors of chiropractic are urged to attend this meeting of great importance to the chiropractic profession.

Come to the joint convention of the CCA and NCA – and be sure to include the CREES luncheon. It's in the Boulevard Room at the Ambassador Hotel, Los Angeles.

A special program has been arranged that will feature Assemblyman Carley Porter, and Judge Ralph Dills. Hear these two outstanding leaders – and learn how CREES can help you.

CHIRORPACTIC RESEARCH EDUCATION ETHICS SOCIETY, INC.
1518 East Compton Blvd., Compton, Calif. NEwmark 1-2466

1957 (July): ***ICA International Review*** [12(1)] includes:
-"Proctology in California outside D.C.'s scope" (p. 20); reports "official opinion" of CA Attorney General Edmund G. Brown

1959 (Sept): ***California Chiropractic Association Journal*** [15(5)] includes:
-"CREES sues Medical Board" (pp. 6-7, 10-11)

1959 (Oct): ***California Chiropractic Association Journal*** [15(6)] includes:
-"CREES ACTION" (p. 4):

The CREES complaint against the Medical Board was heard Friday, September 4, by Judge Ellsworth Meyer, Los Angeles County Superior Court. The attorney for the Medical Board filed demurrers against the complaint in general and against each of the eight causes of action. The judge took the petition under submission and study and on September 10 gave his reply, denying the demurrers on causes one, three and eight. The trial date will be announced.

A statement issued by Attorney Nathan Newby, Jr., at that time, follows:

"I have just returned from Department 65 and have read the Minute Order of the Court in the matter of CREES, et al vs. California State Board of Medical Examiners, et al., in connections with the demurrer, motion to strike and the order to show cause.

"In its order the Court sustained the demurrer of the defendants as to the individual causes of action of the five chiropractors and they are out of the case as individuals, leaving CREES to carry the ball against the State Board of Medical Examiners and the Board Members individually.

"The Court overruled the demurer as to the first, second and eighth causes of action which charge the State Board of Medical Examiners and the individual members of the Board with a conspiracy to destroy the practice of chiropractic in the State of California by threat, intimidation and use of Section 2141 of the Business and Professions Code, and also set up the basic controversy between the chiropractors and the physicians and surgeons in the practice of a healing art in the State of California under their respective Boards.

"This means we are now in court on all of our basic claims and grievances.

"The Court, however, did not grant an injunction on the grounds that it was not necessary to protect the rights of the chiropractors pending the determination of the lawsuit.

"The Court also granted the defendants' motion to strike certain evidentiary matters which had been alleged in the complaint for the purpose of supporting the injunction. When the Court decided that the injunction was not necessary, this evidentiary matter was stricken from the complaint but can be introduced at the time of the trial under the pleadings in their present form.

"In my opinion the injunction would have been a more or less moot point for the reason that any over action on the part of the medical Board would give rise to the filing of a supplemental complaint to show the complete disregard of the Medical Board for the rights of the chiropractors pending this judicial settlement of their respective legal rights.

"The Court also decided that inasmuch as the investigators are employees only of the Medical Board any judgment against the Board of Medical Examiners and its members would bind the investigators and hence they were dropped from the suit."

1960 (Nov/Dec): ***The Western Family Doctor***, edited by Leo E. Montenegro, D.C., N.D., includes:

-cover includes classic photo of physician at sick bed, plus comment:

Without a personal physician to ride herd on the specialists, we cannot have good medical care. Yet in a few years it will be hard to find one unless the Doctor of Chiropractic becomes the family doctor, in the full sense of the word.

-E.G. Williamson, D.C. authors "CREES News Bulletin" (p. 9); includes:

Chiropractic Research Education Ethics Society
Webster 8-3583
1283 Cochran Avenue ● Los Angeles 19, California
Phil Jacks, Business Manager
Dr. E.G. Williamson, D.C., President
Dr. David Ricks, Treasurer

CREES, the legal arm of the profession, has shown its capability to generate the tremendous thrust necessary to successfully launch a protective atmosphere around your license and guarantee you full legal opportunity to take you part in establishing the most profound impact in the history of the healing arts.

The conduct of the organized Chiropractic profession, giving very little, if any support to candidates in this November election, clearly demands that CREES provide the leadership needed for the Chiropractic profession.

1. At your request we are again making it possible for you to have malpractice insurance as a CREES member.

2. We are establishing a strong legislative information department to give you the fairest and unbiased information out of Sacramento.

3. Through our cooperative arrangement with the Vitagen Co. we will bring you other benefits, making your $ do the job of $$.

4. Let's 'call a spade a spade.' Public relations can't work for us until we make professional relations work. Unity must become a reality for all, not a compromise to benefit the few.

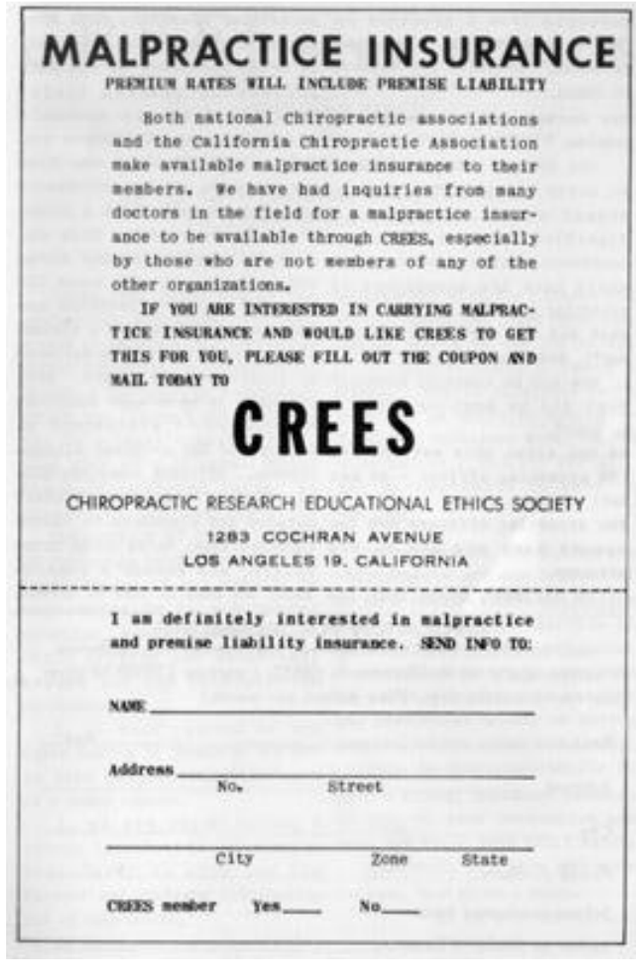
5. We support the California Chiropractic Act and believe it to be a document that guarantees the rights of all. Section 16 of the Chiropractic Act says: 'nor shall this act be construed so as to discriminate against any particular school of chiropractic, or any other treatment;'

This is your opportunity to join a strong, dedicated movement to protect your profession and your law while they still exist.

Remember, all this and more to come, for $5.00 a month.

E.G. Williamson, D.C.
President

-ad for CREES malpractice insurance (p. 11); photograph:



MALPRACTICE INSURANCE

PREMIUM RATES WILL INCLUDE PREMISE LIABILITY

Both national Chiropractic associations and the California Chiropractic Association make available malpractice insurance to their members. We have had inquiries from many doctors in the field for a malpractice insurance to be available through CREES, especially by those who are not members of any of the other organizations.

IF YOU ARE INTERESTED IN CARRYING MALPRACTICE INSURANCE AND WOULD LIKE CREES TO GET THIS FOR YOU, PLEASE FILL OUT THE COUPON AND MAIL TODAY TO

CREES

CHIROPRACTIC RESEARCH EDUCATIONAL ETHICS SOCIETY
1283 COCHRAN AVENUE
LOS ANGELES 19, CALIFORNIA

I am definitely interested in malpractice and premise liability insurance. SEND INFO TO:

NAME _____

Address _____
No. Street

_____
City Zone State

CREES member Yes____ No____

1963 (Mar): ***California Chiropractic Association Journal*** [19(9)] includes:

-"District Court of Appeal rules on CREES decision" (p. 7):

The judgment of the Superior Court of Los Angeles County, Walter C. Allen, Judge, was affirmed by the District Court of Appeal of the State of California, Second Appellate District, Division Two. The decision was filed February **??**, 1963. The case was an appeal by the plaintiffs from a judgment in an action for declaration rights…

F. Licensed chiropractors are not authorized by their license to use any drugs or medicines in materia medica or the dangerous or hypnotic drugs mentioned in section 4211 of the Business and Professions Code or the narcotics referred to in section 11500 of the Health and Safety Code for: (1) diagnosis; (2) as an aid in the practice of chiropractic; (3) for emergencies; or (4) for clinical research.

G. Licensed chiropractors are not authorized by their licenses to practice obstetrics or to sever the umbilical cord in any childbirth or to perform episiotomy.

H. A duly licensed chiropractor may only practice or attempt to practice or hold himself out as practicing a system of treatment by manipulation of the joints of the human body by manipulation of anatomical displacements, articulation of the spinal column, including its vertebrae and cord, and he may use all necessary mechanical, hygienic and sanitary measures incident to the care of the body in connection with said system of treatment, but not for the purpose of treatment, and not including measures as would constitute the practice of medicine, surgery, osteopathy, dentistry or optometry, and without the use of any drug or medicine included in materia medica.

A duly licensed chiropractor may make use of light, air, water, reset, heat, diet, exercise, massage and physical culture, but only in connection with and incident to the practice of chiropractic as hereinabove set forth.

I. It is true that chiropractic is not a static system of healing and that it may advance and change in technique, teaching, learning, and mode of treatment within the limits of chiropractic as set forth in paragraph H above. It may not advance into the fields of medicine, surgery, osteopathy, dentistry, or optometry.

J. Plaintiffs have failed to state facts sufficient to constitute a cause of action or injunction against defendants.

K. None of the plaintiffs are entitled to any injunctive relief against any of the defendants; defendants and their agents may proceed against plaintiffs in the event that plaintiffs exceed the scope of their respective licenses to practice chiropractic and violate the State Medical Practice Act."

1963 (Nov): ***JNCA*** [33(11)] includes:

-letter to W. Max Chapman, M.D., chief of Laboratory Field Services, California Department of Public Health, from Jan Stevens, Deputy Attorney General (pp. 50, 52):

Relationship of Chiropractors to Clinical Laboratories

This will acknowledge receipt of your memorandum of July 22, 1963, inquiring as to whether the recent case of **Crees v. California State Board of Medical Examiners**, 213 A.C.A. 214 indicates a change in the relationship of chiropractors to clinical laboratories. More specifically, you have asked whether, in light of this case, chiropractors now have any reason to order tests done by licensed clinical laboratories or any legal basis for ordering such tests, especially those requiring skin puncture or venipuncture.

As indicated in your memorandum, this office has held that, in light of Business and Professions Code sections 1205 and 1242, chiropractors could properly refer work to licensed clinical laboratories, even though the particular test involved required actions which a chiropractor would not himself be able to do, such as skin puncture or venipuncture. 19 Ops. Cal. Atty. Gen. 201. The proper test was stated to be "…not whether the licentiate may himself perform venipuncture or skin puncture, but whether the test performed by the clinical laboratory will be of any aid to him in the proper practice of his profession. Such aid consists of more than helping the licentiate determine the proper course of treatment; it may demonstrate the patient's difficulty is outside the scope of the licentiate's study. We conceive that it could assist the licentiate with remaining within the scope of his license." 19 Ops. Cal. Atty. Gen. At 203.

Although, as you indicate the **Crees** case defines the practice of chiropractic within narrow limits, the Court very clearly did not limit the practice of this profession more narrowly than it was at the time of the opinion cited. The court made it clear that the practice of chiropractic is confined to what it was at the time the Chiropractic Act was adopted in 1922. 213 A.C.A. at 223. Although the Court did state that a license from the Board of Medical Examiners was necessary in order to diagnose, treat, operate or prescribe for ailments and other conditions within the meaning of Business and Professions Code section 2141 and that the use of drugs or medicines by chiropractors for such purposes was prohibited, we believe that chiropractors may still properly refer tests to licensed clinical laboratories for the purposes enumerated in the opinion cited. Certainly, such tests could still be of aid in assisting a chiropractor in remaining within the scope of his license. The Crees case represented an attempt on the part of the plaintiffs to obtain an enlarged definition of the practice of chiropractic. Since that practice within this opinion remains within the same limits as it was before, we see no reason for imposing further restrictions on the authority chiropractors have to refer tests to clinical laboratories for the limited purposes set forth in our previous opinion.

2002 (June 16): e-mail from David Prescott, D.C., J.D. (davidprescott2@cox.net):

Dear Joe:

Good to hear from you. I expect to file the scope of practice lawsuit this month, or early next month at the latest. We are, of course, directly challenging the Crees ruling. That has not been done since that decision was handed down. In addition, we intend to partially circumvent it but still put chiropractors not only where they tried to get in Crees and failed, but in a better position.

The representation in the Crees case was perhaps the worst example of lawyering I have ever had the displeasure to read. It is obvious the court thought the same thing. Of course, the chiropractic community was told that the reason the courts (especially the State Supreme Court) did not rule in favor of the chiropractors was prejudice. Simply put, I would have ruled the same way as did the courts based upon the record presented to the trial court in Crees.

I intend to post the complaint to our web site when it is finished. It will be too long to mail out to a lot of people but I would be happy to provde you with a hard copy should you so desire. Again, good to hear from you.

Please stay in touch.

David

2002 (June 25): e-mail from Robert Jackson, D.C., N.D. (RJ Jaxon@aol.com):

The only thing I have on Carver is in the article I did in *CH - 14/2 Dec. 1994 - p.12-20.* Your welcome to any part thereof.

CREES - all I have on that is in JCH v.5/1 1995, p.60-61 of - *Califorina's* Medical Practice Act: Chiropractors Amend Without Medical Opposition - 1967. My legislative handiwork.. I have somewhere a copy of the - California - CREES v. Board of Medical & Chiropratic Examiners, et al, 28 Cal, Rptr. 621, Civ. You are welcome to any parts herein. You can make a copy of this last work from the AZ State Law Library Archives Files by States. Otherwise there are no DC's alive today who know what this mess was all about, I was the last to bring this subject up.

Bob

2002 (June 26): e-mail from Bob Jackson, D.C., N.D.:

Thanks Joe - All of CREES action caused a hell of a mess for the Profession when as a result of their zeal, the Medical Board vowed to out-law Chiro - and when they introduced a Bill into the Legislature to sat - "- that any DC Px w/in the limits of the CA DC Act could be arrested by the Medical Board for Px Med. w/o a lic," we all saw what damage CREES had done. And guess who had to clean up this mess - Moi, and it was a hell of a job!! But, that's all water under the bridge now, and no one remembers this facet of our History, save I put it in writing in the JCH 1995 article.

Thanks for bringit to bear once again in your work. I wish you well in your new books.

Bob

References:

Jackson, Robert B. California's medical practice act: chiropractors amend without medical opposition – 1967. *Journal of Chiropractic Humanities* 1995; 5: 56-65

Restriction of right to amend articles: No / Yes

3 32226

FILED
In the office of the Secretary of State of the State of California
APR 27 1955
FRANK M. JORDAN, Secretary of State
By [illegible]
Assistant Secretary of State

Articles of Incorporation
of

CREES

Under the Laws of the State of California

KNOW ALL MEN BY THESE PRESENTS: That we, the undersigned, have this day voluntarily associated ourselves together for the purpose of forming a corporation under the laws of the State of California,

AND WE DO HEREBY CERTIFY:

FIRST: That the name of said corporation is: CREES

SECOND: (a) The primary business in which said corporation is intended to initially engage is:
engage in chiropractic research, encourage a program of continued education of chiropractors, and assist in maintaining the ethics of the chiropractic profession.

(b) In addition to the foregoing purpose for which said corporation is formed, the purposes for which said corporation is formed are as follows:

This corporation is organized pursuant to Part 1 of Division 2 of Title 1 of the Corporations Code, and the general purposes for which it is formed are to engage in chiropractic research, encourage a program of continued education of chiropractors, and assist in maintaining the ethics of the chiropractic profession, that is to say, this corporation is organized and will be operated exclusively for scientific and educational purposes, although it may also engage in charitable activities such as the providing of endowments for needy students of chiropractic, grants to persons engaged in chiropractic research, financial assistance to needy chiropractors or any other charitable work related to the interests of the chiropractic profession, to contract for, purchase, lease, rent or otherwise acquire, and to own, hold, operate, maintain, manage, use, improve, control, enjoy and develop, and to mortgage, pledge, hypothecate, transfer in trust, sell, convey, assign, transfer, market, lease, exchange, or in any manner create a charge against or otherwise dispose of, and to invest in, trade in, deal in and turn to account real and personal property of every kind and description, in connection with the conduct of any business or businesses enumerated in these articles of incorporation or in connection with the conduct of any other business in which the corporation may lawfully engage; and generally to have each and all of the powers and to do any and all of the acts and things which non-profit corporations organized under the laws of the State of California may have, do or exercise, and to do any and all acts and things that corporations and natural persons and associations of individuals may do, which do not contemplate gain or profit or the distribution of any gains, profits or dividends to the members of said corporation.

To engage in any business whatsoever, either as principal or as agent or both or as a partnership, which said corporation may deem convenient or proper in furtherance of any of the purposes hereinabove mentioned or otherwise; to conduct its business in this state, in other states, in the District of Columbia, in the territories and possessions of the United States, and in foreign countries; and to have and to exercise all powers authorized by the laws of the State of California under which said corporation is formed, whether expressly set forth in this SECOND paragraph or not, as such laws are now in effect or may at any time hereafter be amended.

The foregoing statement of purposes shall be construed both as a statement of purposes and of powers, and the statements contained in each clause shall, except where otherwise expressed, not be limited or restricted by reference to or inference from the provisions of any other clause.

---

1 See Corporations Code Section 301.

THIRD: That the principal office for the transaction of the business of said corporation is to be located in the County of Los Angeles, State of California.

FOURTH:[2] That the number of directors of said corporation shall be three.

That the names and addresses of the persons who are appointed to act as the first directors are as follows:

NAMES	ADDRESSES
Dr. Wm. C. Meyer	795 North Park Avenue, Pomona, Calif.
Dr. David L. Ricks	3641 East Century, Lynwood, Calif.
Dr. E. G. Williamson	1518 East Compton Boulevard, Compton, Calif.

FIFTH:[3]

That said corporation is a corporation which does not contemplate pecuniary gain or profit to the members thereof. The authorized number and qualifications of the members of said corporation, and their liability to dues and assessments and the method of collection thereof, may be set forth in the by-laws of said corporation. Said corporation shall have no capital stock but may issue certificates or other evidence of membership to its members.

[2] See Corporations Code Section 301(d).

[3] Insert in Paragraph FIFTH data required by Corporations Code Section 302 (where is one class of shares), by Section 303 (where is more than one class of shares), or by Section 304 (where is more than one class or series of a class of shares), as the case may be. Under Corporations Code Section 302, the wording may be substantially as follows: "Said corporation is authorized to issue only one class of shares of stock, the total number of which is _____ shares, of an aggregate par value of $_____, and of the par value of $_____ per share", or: "Said corporation is authorized to issue only one class of shares of stock; the total number of shares is _____; and all of said shares of stock are to be without par value."

IN WITNESS WHEREOF, we have hereunto set our hands this 18th

day of March, 19 55.*

Dr. David L. Ricks D.C.

Dr. Wm. C. Meyer D.C.

Dr. E. G. Williamson D.C.

STATE OF CALIFORNIA,

COUNTY OF Los Angeles } SS.

On this 28 day of March, 19 55, before me, the undersigned, a Notary Public in and for said County and State, personally appeared

Dr. Wm. C. Meyer,
Dr. David L. Ricks and Dr. E. G. Williamson, known to me to be the persons whose names are subscribed to the foregoing ARTICLES OF INCORPORATION, and acknowledged to me that they executed the same.

WITNESS my hand and official seal.

George Hamer

Notary Public in and for said County and State.

(NOTARIAL SEAL) GEORGE HAMER, Notary Public
In and for the County of Los Angeles, State of California
My Commission Expires Jan. 21, 1957

* Corporations Code Section 307 reads, in part, as follows: "Each person named in the articles as a director shall and any such other persons may, personally sign the articles . . . . ."

STATE OF CALIFORNIA

OFFICE OF

Franchise Tax Board

1020 N STREET
SACRAMENTO 14

April 25, 1955

Crees
c/o Oregon Smith, Atty.
125 East C Street
Ontario, California

Gentlemen:

RE: Exemption From Franchise Tax

It is the opinion of this office based upon the evidence presented, that you are exempt from State franchise tax under the provisions of Section 23701e of the Revenue and Taxation Code, as it is shown that you are organized and operated exclusively as a professional society.

Accordingly, you will not be required to file franchise tax returns unless you change the character of your organization, the purposes for which you were organized, or your method of operation. Any such changes should be reported immediately to this office in order that their effect upon your exempt status may be determined.

You will be required, however, to file annually, beginning with your current accounting period, an information return on Form 199 with this office as long as this exemption remains in effect. This form may be obtained from this office or any of its branches and is required to be filed on or before the 15th day of the fifth month following the close of your annual accounting period.

However, if you have income that is taxable under the provisions of Section 23771 of the Revenue and Taxation Code, a return on Form 109 must be filed in this office on or before the 15th day of the third month following the close of your annual accounting period. This form may be obtained from this office or any of its branches.

If the organization is not yet incorporated or has not yet qualified to do business in California, this approval will expire within thirty days unless incorporation or qualification is completed within such period.

Very truly yours

FRANCHISE TAX BOARD
John J. Campbell
Executive Officer

By
Milton A. Huot
Associate Tax Counsel

MAH:em
cc - Secretary of State
(A, E, H)

302226

A 176681

FILED
JUL 2 - 1959
Secretary of State

CERTIFICATE OF AMENDMENT OF
THE ARTICLES OF INCORPORATION OF
CREES

The undersigned, E. G. WILLIAMSON and DAVID L. RICKS, do hereby certify that they are, respectively, and have been at all times herein mentioned, the duly elected and acting President and Secretary of CREES, a nonprofit California corporation, and further that:

One: At a regular meeting of the board of directors of said corporation duly held at its principal office for the transaction of business at 1283 Cochran Avenue, Los Angeles, California, at 4:00 o'clock P.M., on the 28th day of March, 1959, at which meeting there was at all times present and acting a quorum of the members of said board, the following resolutions were duly adopted:

"WHEREAS, it is deemed by the board of directors of this corporation to be to its best interests and to the best interests of its members that its articles of incorporation be amended as hereinafter provided:

NOW, THEREFORE, BE IT RESOLVED that Article SECOND of the articles of incorporation of this corporation be amended to read as follows:

'SECOND: (a) The primary business in which said corporation is intended to initially engage is: Engage in chiropractic research, encourage a program

of continued education of chiropractors, and assist in maintaining the ethics of the chiropractic profession.

(b) In addition to the foregoing purposes for which said corporation is formed, the purposes for which said corporation is formed are as follows: This corporation is organized pursuant to Part 1 of Division 2 of Title 1 of the Corporations Code, and the general purposes for which it is formed are to engage in chiropractic research, encourage a program of continued education of chiropractors, and assist in maintaining the ethics of the chiropractic profession, that is to say, this corporation is organized and will be operated exclusively for scientific and educational purposes, although it may also engage in charitable activities such as the providing of endowments for needy students of chiropractic, grants to persons engaged in chiropractic research, financial assistance to needy chiropractors or any other charitable work related to the interests of the chiropractic profession, to contract for, purchase, lease, rent or otherwise acquire, and to own, hold, operate, maintain, manage, use, improve, control, enjoy and develop, and to mortgage, pledge,hypothecate, transfer in trust, sell, convey, assign, transfer, market, lease, exchange, or in any manner create a charge against or otherwise dispose of, and to invest in, trade in, deal in and turn to account real and personal property of every kind and description, in connection with the conduct of any business or businesses enumerated in

these articles of incorporation or in connection with the conduct of any other business in which the corporation may lawfully engage; and generally to have each and all of the powers and to do any and all of the acts and things which nonprofit corporation organized under the laws of the State of California may have, do or exercise, and to do any and all acts and things that corporations and natural persons and associations of individuals may do, which do not contemplate gain or profit or the distribution of any gains, profits or dividends to the members of said corporation.

(c) As incidental to the main objectives and purposes hereinbefore mentioned in subparagraphs (a) and (b) of this Article SECOND, to acquire by gift, purchase or exchange, personal and real property, tangible and intangible, and to sell, loan, exchange, lease, mortgage, invest or reinvest the same or the proceeds thereof.

(d) As incidental to the main objectives and purposes hereinbefore mentioned in subparagraphs (a) and (b) of this Article SECOND, to receive from its members voluntary contributions for the purpose of defraying the expense of making studies of legislation affecting the chiropractic profession and initiating and supporting legislative action, initiative petitions and referendums pertaining to the chiropractic profession and the preparation and dissemination to its members and to the public, of information concerning pending

legislation, pending initiative petitions and pending referendums and public laws affecting the chiropractic profession.

(e) As incidental to the main objectives and purposes hereinbefore mentioned in subparagraphs (a) and (b) of this Article SECOND, to protect its members from any abuse of legal process or from any enforcement of the laws affecting the chiropractic profession which enforcement is contrary to the law and in violation of the rights, privileges and immunities of members as guaranteed by the law and/or the State and Federal Constitutions by supplying any member with funds to procure bail in cases of arrest for violation of the Business and Professional Code and any law governing the profession of chiropractic and the practice of chiropractic and providing funds to such members to enable him to employ an attorney of his own choosing for his defense. Such aid to members to be on such terms as the board of directors shall determine but in no event shall this corporation receive any profit from such operations or engage in the bail bond business or have the right to require any member receiving aid to choose any particular bail bond broker or an attorney selected by the corporation or an attorney selected from a list of named attorneys chosen or nominated by the corporation or any attorney in the employ of the corporation.

The foregoing statement of purposes shall be construed both as a statement of purposes and of

powers, and the statements contained in each clause shall, except where otherwise expressed, not be limited or restricted by reference to or inference from the provisions of any other clause.'

NOW, THEREFORE, BE IT FURTHER RESOLVED that Article FOURTH be amended to read as follows:

'FOURTH: That the number of directors of this corporation shall be not less than three and not more than seven until changed by amendment of these Articles of Incorporation, or by a By-Law adopted by a vote or written consent of a majority of the members entitled to vote in accordance with the terms of the By-Laws.

That the names and addresses of the persons who are appointed to act as the first directors are as follows:

Dr. Wm. C. Meyer, D.C.	795 North Park Avenue Pomona, California
Dr. David L. Ricks, D.C.	3641 East Century Lynwood, California
Dr. E. G. Williamson, D.C.	1518 E. Compton Blvd. Compton, California '

NOW, THEREFORE, BE IT FURTHER RESOLVED that Article FIFTH be amended to read as follows:

'FIFTH: The members of this corporation, without limitation as to number, shall be licensed chiropractors under the laws of the State of California whether practicing or not, as shall be elected to membership, as provided in the by-laws of the corporation. The by-laws shall determine whether there shall

be one or more classes of membership, the qualifications for membership other than being a licensed chiropractor and the different classes of membership, if more than one, and the voting and other rights of members and each class of membership. The by-laws shall determine the liability of members to the payment of dues and assessments and the method of collecting the same and the penalties, if any, for failure to pay any dues and/or assessments levied.

This corporation shall have no capital stock but may issue certificates or other evidence of membership to its members.'

NOW, THEREFORE, BE IT FURTHER RESOLVED that the following new Articles SIXTH and SEVENTH be added to the Articles of Incorporation to read as follows:

'SIXTH: No property, assets, income, profits or net income, or any gifts or contributions, received by the corporation may under any condition inure in whole or in part to the benefit of any member except as provided in Article SECOND of these Articles. Upon dissolution of this corporation any and all assets belonging to the corporation at that time shall not be distributed to the members and shall be transferred, set over and granted unto any tax exempt charitable, or tax exempt educational organization within the meaning of the revenue laws of the United States, elected by the board of directors during the winding up and dissolution proceedings.'

'SEVENTH: This corporation shall have

perpetual existence.'"

Two: The number of members entitled to vote and consenting to such amendment of its articles of incorporation is seven members. Attached hereto is a copy of the form of written consent executed by members entitled to vote.

Three: The total number of members entitled to vote on such amendment is ten members.

IN WITNESS WHEREOF, the undersigned have executed this Certificate of Amendment of the Articles of Incorporation of CREES this 28th day of March, 1959.

President of Crees

Secretary of Crees

STATE OF CALIFORNIA)
) SS
COUNTY OF LOS ANGELES)

E. G. WILLIAMSON and DAVID L. RICKS, being first duly sworn, each for himself, deposes and says:

That E. G. Williamson is, and was at all of the times mentioned in the foregoing Certificate of Amendment, the president of CREES, the nonprofit California corporation therein mentioned, and David L. Ricks is, and was at all of said times, the secretary of said corporation; and each has read said Certificate and that the statements therein made are true of his own knowledge, and that the signatures purporting to be the signatures of said president and secretary thereto are the genuine signatures of said president and secretary, respectively.

E. G. Williamson

David L. Ricks

Subscribed and sworn to before me this 30 day of MARCH, 1959, by E. G. WILLIAMSON.

Notary Public in and for said County and State

Subscribed and sworn to before me this 6th day of April 1959

Notary Public in and for said County and State

My Commission Expires July 17, 1960

WRITTEN CONSENT OF MEMBERS TO AMENDMENT
OF ARTICLES OF INCORPORATION OF
CREES

WHEREAS, at a regular meeting of the Board of Directors of CREES, a nonprofit corporation, duly held at the principal office for the transaction of business of said corporation at 1283 Cochran Avenue, Los Angeles, California, on the 28th day of March, 1959, at which meeting a quorum of the members of said board was at all times present and acting, amendments of the Articles of Incorporation were adopted and approved by resolutions of said board by amending Articles SECOND, FOURTH and FIFTH and adding Articles SIXTH and SEVENTH to read as follows:

"SECOND: (a) The primary business in which said corporation is intended to initially engage is: Engage in chiropractic research, encourage a program of continued education of chiropractors, and assist in maintaining the ethics of the chiropractic profession.

(b) In addition to the foregoing purposes for which said corporation is formed, the purposes for which said corporation is formed are as follows: This corporation is organized pursuant to Part 1 of Division 2 of Title 1 of the Corporations Code, and the general purposes for which it is formed are to engage in chiropractic research, encourage a program of continued education

EXHIBIT

of chiropractors, and assist in maintaining the ethics of the chiropractic profession, that is to say, this corporation is organized and will be operated exclusively for scientific and educational purposes, although it may also engage in charitable activities such as the providing of endowments for needy students of chiropractic, grants to persons engaged in chiropractic research, financial assistance to needy chiropractors or any other charitable work related to the interests of the chiropractic profession, to contract for, purchase, lease, rent or otherwise acquired, and to own, hold, operate, maintain, manage, use, improve, control, enjoy and develop, and to mortgage, pledge, hypothecate, transfer in trust, sell, convey, assign, transfer, market, lease, exchange, or in any manner create a charge against or otherwise dispose of, and to invest in, trade in, deal in and turn to account real and personal property of every kind and description, in connection with the conduct of any business or businesses enumerated in these articles of incorporation or in connection with the conduct of any other business in which the corporation may lawfully engage; and generally to have each and all of the powers and to do any and all of the acts and things which nonprofit corporation organized under the laws of the State of California may have, do or exercise, and to do any and all acts and things that corporations and natural persons and associations of individuals may do, which do not contemplate gain or profit or the distribution of any gains, profits or dividends,

to the members of said corporation.

(c) As incidental to the main objectives and purposes hereinbefore mentioned in subparagraphs (a) and (b) of this Article SECOND, to acquire by gift, purchase or exchange, personal and real property, tangible and intangible, and to sell, loan, exchange, lease, mortgage, invest or reinvest the same or the proceeds thereof.

(d) As incidental to the main objectives and purposes hereinbefore mentioned in subparagraphs (a) and (b) of this Article SECOND, to receive from its members voluntary contributions for the purpose of defraying the expense of making studies of legislation affecting the chiropractic profession and initiating and supporting legislative action, initiative petitions and referendums pertaining to the chiropractic profession and the preparation and dissemination to its members and to the public, of information concerning pending legislation, pending initiative petitions and pending referendums and public laws affecting the chiropractic profession.

(e) As incidental to the main objectives and purposes hereinbefore mentioned in subparagraphs (a) and (b) of this Article SECOND, to protect its members from any abuse of legal process or from any enforcement of the laws affecting the chiropractic profession which enforcement is contrary to the law and in violation of the rights,

privileges and immunities of members as guaranteed by the law and/or the State and Federal Constitutions by supplying any member with funds to procure bail in cases of arrest for violation of the Business and Professional Code and any law governing the profession of chiropractic and the practice of chiropractic and providing funds to such members to enable him to employ an attorney of his own choosing for his defense. Such aid to members to be on such terms as the board of directors shall determine but in no event shall this corporation receive any profit from such operations or engage in the bail bond business or have the right to require any member receiving aid to choose any particular bail bond broker or an attorney selected by the corporation or an attorney selected from a list of named attorneys chosen or nominated by the corporation or any attorney in the employ of the business.

The foregoing statement of purposes shall be construed both as a statement of purposes and of powers, and the statements contained in each clause shall, except where otherwise expressed, not be limited or restricted by reference to or inference from the provisions of any other clause.

FOURTH: That the number of directors of this corporation shall be not less than three and not more than seven until changed by amendment of these Articles of Incorporation, or by a By-Law adopted by a vote or written consent of a majority of the members entitled to vote in accordance with

the terms of the By-Laws.

That the names and addresses of the persons who are appointed to act as the first directors are as follows:

Dr. Wm. C. Meyer, D.C.	795 North Park Avenue Pomona, California
Dr. David L. Ricks, D.C.	3641 East Century Lynwood, California
Dr. E. G. Williamson, D.C.	1518 E. Compton Blvd. Compton, California

FIFTH: The members of this corporation, without limitation as to number, shall be licensed chiropractors under the laws of the State of California whether practicing or not, as shall be elected to membership, as provided in the by-laws of the corporation. The by-laws shall determine whether there shall be one or more classes of membership, the qualifications for membership other than being a licensed chiropractor and the different classes of membership, if more than one, and the voting and other rights of members and each class of membership. The by-laws shall determine the liability of members to the payment of dues and assessments and the method of collecting the same and the penalties, if an, for failure to pay any dues and/or assessments levied.

This corporation shall have no capital stock but may issue certificates or other evidence of membership to its members.

SIXTH: No property, assets, income, profits or net income, or any gifts or contributions, received by the corporation may under any condition inure in whole or in part to the benefit of any member except as provided in Article SECOND of these Articles. Upon dissolution of this corporation any and all assets belonging to the corporation at that time shall not be distributed to the members and shall be transferred, set over and granted unto any tax exempt charitable, or tax exempt educational organization within the meaning of the revenue laws of the United States, elected by the board of directors during the winding up and dissolution proceedings.

SEVENTH: This corporation shall have perpetual existence."

NOW THEREFORE, each of the undersigned members of said corporation does hereby adopt, approve and consent to the foregoing Amendment of the Articles of Incorporation, and does hereby consent that Articles SIXTH and SEVENTH be added to read as hereinabove set forth.

IN WITNESS WHEREOF, each of the undersigned has hereunto signed his name, and following his name, the date of signing.

NAME	DATE
Elton G. Williamson	4-4-59
David L. Ricks	4-4-59

NAME	DATE
James M. Shults	6-4-59
Wm. C. Meyer	6-8-59
R. W. Jones	6-13-59
John de Heras	6-17-59
L. E. Montenegro	6-22-59

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FILED
In the Office of the Secretary of State
of the State of California
AUG 14 1959
FRANK M. JORDAN, Secretary of State
By Deputy

CERTIFICATE OF RESTATED
ARTICLES OF INCORPORATION OF
CREES

The undersigned, DR. ELTON G. WILLIAMSON, D.C. and DR. DAVID L. RICKS, D.C., hereby certify that they are, respectively, and have been at all times herein mentioned, the duly elected and acting President and Secretary of CREES, a nonprofit California corporation and further that they are authorized by the Board of Directors of Crees to execute this restatement which sets forth the Articles of Incorporation as amended to the date of this certificate and that the signatures and acknowledgments are omitted;

AND WE DO HEREBY CERTIFY:

FIRST: That the name of said corporation is:

CREES

SECOND: (a) The primary business in which said corporation is intended to initially engage is:

Engage in chiropractic research, encourage a program of continued education of chiropractors, and assist in maintaining the ethics of the chiropractic profession.

(b) In addition to the foregoing purposes for which said corporation is formed, the purposes for which said corporation is formed are as follows:

This corporation is organized pursuant to Part 1 of Division 2 of Title 1 of the Corporations Code, and the general purposes for which it is formed

are to engage in chiropractic research, encourage a program of continued education of chiropractors, and assist in maintaining the ethics of the chiropractic profession, that is to say, this corporation is organized and will be operated exclusively for scientific and educational purposes, although it may also engage in charitable activities such as the providing of endowments for needy students of chiropractic, grants to persons engaged in chiropractic research, financial assistance to needy chiropractors or any other charitable work related to the interests of the chiropractic profession, to contract for, purchase, lease, rent or otherwise acquire, and to own, hold, operate, maintain, manage, use, improve, control, enjoy and develop, and to mortgage, pledge hypothecate, transfer in trust, sell, convey, assign, transfer, market, lease, exchange, or in any manner create a charge against or otherwise dispose of, and to invest in, trade in, deal in and turn to account real and personal property of every kind and description, in connection with the conduct of any business or businesses enumerated in these articles of incorporation or in connection with the conduct of any other business in which the corporation may lawfully engage; and generally to have each and all of the powers and to do any and all of the acts and things which nonprofit corporations organized under the laws of the State of California may have, do or exercise, and to do any and all acts and things that corporations and natural persons and associations of individuals may do, which do not contemplate gain or

profit or the distribution of any gains, profits or dividends to the members of said corporation.

(c) As incidental to the main objectives and purposes hereinbefore mentioned in subparagraphs (a) and (b) of this Article SECOND, to acquire by gift, purchase or exchange, personal and real property, tangible and intangible, and to sell, loan, exchange, lease, mortgage, invest or reinvest the same or the proceeds thereof.

(d) As incidental to the main objectives and purposes hereinbefore mentioned in subparagraphs (a) and (b) of this Article SECOND, to receive from its members voluntary contributions for the purpose of defraying the expense of making studies of legislation affecting the chiropractic profession and initiating and supporting legislative action, initiative petitions and referendums pertaining to the chiropractic profession and the preparation and dissemination to its members and to the public, of information concerning pending legislation, pending initiative petitions and pending referendums and public laws affecting the chiropractic profession.

(e) As incidental to the main objectives and purposes hereinbefore mentioned in subparagraphs (a) and (b) of this Article SECOND, to protect its members from any abuse of legal process or from any enforcement of the laws affecting the chiropractic profession which enforcement is contrary to the law

and in violation of the rights, privileges and immunities of members as guaranteed by the law and/or the State and Federal Constitutions by supplying any member with funds to procure bail in cases of arrest for violation of the Business and Professions Code and any law governing the profession of chiropractic and the practice of chiropractic and providing funds to such members to enable him to employ an attorney of his own choosing for his defense. Such aid to members to be on such terms as the board of directors shall determine but in no event shall this corporation receive any profit from such operations or engage in the bail bond business or have the right to require any member receiving aid to choose any particular bail bond broker or an attorney selected by the corporation or an attorney selected from a list of named attorneys chosen or nominated by the corporation or any attorney in the employ of the corporation.

The foregoing statement of purposes shall be construed both as a statement of purposes and of powers, and the statements contained in each clause shall, except where otherwise expressed, not be limited or restricted by reference to or inference from the provisions of any other clause.

THIRD: That the principal office for the transaction of the business of said corporation is to be located in the County of Los Angeles, State of California.

FOURTH: That the number of directors of this corporation shall be not less than three and not more than seven until changed by amendment of these Articles of Incorporation, or by a By-Law adopted by a vote or written consent of a majority of the members entitled to vote in accordance with the terms of the By-Laws.

That the names and addresses of the persons who are appointed to act as the first directors are as follows:

Dr. Wm. C. Meyer, D.C.	795 North Park Avenue Pomona, California
Dr. David L. Ricks, D.C.	3641 East Century Lynwood, California
Dr. E. G. Williamson, D.C.	1518 E. Compton Blvd. Compton, California

FIFTH: The members of this corporation, without limitation as to number, shall be licensed chiropractors under the laws of the State of California whether practicing or not, as shall be elected to membership, as provided in the by-laws of the corporation. The by-laws shall determine whether there shall be one or more classes of membership, the qualifications for membership other than being a licensed chiropractor and the different classes of membership, if more than one, and the voting and other rights of members and each class of membership. The by-laws shall determine the liability of members to the payment of dues and assessments and the method of collecting the same and the penalties, if any, for failure to pay any dues and/or assessments levied.

This corporation shall have no capital stock but may issue certificates or other evidence of membership to its members.

SIXTH: No property, assets, income, profits or net income, or any gifts or contributions, received by the corporation may under any condition inure in whole or in part to the benefit of any member except as provided in Article SECOND of these Articles. Upon dissolution of this corporation any and all assets belonging to the corporation at that time shall not be distributed to the members and shall be transferred, set over and granted unto any tax exempt charitable, or tax exempt educational organization within the meaning of the revenue laws of the United States, elected by the board of directors during the winding up and dissolution proceedings.

SEVENTH: This corporation shall have perpetual existence.

IN WITNESS WHEREOF, the undersigned have executed this Certificate of Restated Articles of Incorporation of Crees this 9th day of August, 1959.

Dr. Elton G. Williamson, D.C.
President of Crees

Dr. David L. Ricks, D.C.
Secretary of Crees

STATE OF CALIFORNIA)
) SS
COUNTY OF LOS ANGELES)

DR. ELTON G. WILLIAMSON, D.C. and DR. DAVID L. RICKS, D.C., being first duly sworn, each for himself, deposes and says:

That Dr. Elton G. Williamson, D.C. is, and was at all of the times mentioned in the foregoing Certificate of Restated Articles of Incorporation, the president of CREES, the nonprofit California corporation therein mentioned, and Dr. David L. Ricks, D.C. is, and was at all of said times, the secretary of said corporation; and each has read said Certificate and that the statements therein made are true of his own knowledge, and that the signatures purporting to be the signatures of said president and secretary thereto are the genuine signatures of said president and secretary respectively.

That they have been authorized to execute the Certificate of Restated Articles of Incorporation by Crees by resolution of the Board of Directors of Crees adopted the 1st day of August, 1959, and that the Certificate correctly set forth the text of the Articles of Incorporation as amended to the date of this certificate.

Dr. Elton G. Williamson, D.C.

Dr. David L. Ricks, D.C.

Subscribed and sworn to before me this 9th day of August, 1959.

Notary Public in and for said County and State

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ME  CREES



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                    COMPL/NC     DATE          NO
FICERS CERT   EXEMPTION CODE     DATE          NO            A/P


INCIPAL EXECUTIVE ADDR

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ILING ADDRESS


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         CITY/ST/CNTRY
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ENT   NAME
                ADDRESS

                   CITY                         CA

PE OF BUSINESS
TR=CONTINUE     PF2=HISTORY     PF3=BACK TO WORKSCREEN     PF10=MAIN MENU
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